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PREFACE

FEW, if any, of those for whom this book is intended will be disposed to deny the usefulness and necessity of Casuistry for the ecclesiastical student and the confessor. If the priest's work in the cure of souls and in the confessional is to be done fruitfully and if disastrous mistakes are to be prevented as far as possible, previous and solid training is absolutely necessary. Mere speculative knowledge is not sufficient to fit the priest for his work. His duty is to guide souls according to the principles of the Catholic faith, and a merely speculative knowledge of those principles will not enable him to perform the task imposed upon him. Nobody supposes that book knowledge alone will fit the judge or the doctor for the practical work of the law courts and the sick-room. As little will a knowledge of speculative theology fit the priest for the work that he has to do. He is both a judge and a doctor. Only the cases that he has to decide are often more intricate than those which are heard in the law courts, and the diseases which he is called upon to heal are more difficult to diagnose accurately and to prescribe for than are those of the body. It adds to the difficulty that such practical training for their profession as the judge and the lawyer get is not possible in the case of the priest. The medical student walks the wards of the hospitals and observes how cases of bodily disease are treated by an expert. The judge usually has a long preparatory training in the practice of the law. No such practical training is possible for the

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young aspirant to the priesthood. The next best thing to actual experience in the cure of souls is to provide him with books such as this, where the principles that he has already learned are applied to concrete cases. For many years past my official duties have laid on me the task of providing such practical cases for the students under my care. I have always striven to keep the end steadily in view. The moral principles were supposed to be already known. What was wanted was to train the young student so that he might be able to detect at once what principles were to be applied to a given concrete case, and to train his judgment so that he might apply those principles correctly. In this volume I have collected together the greater part of the cases that I have given on the general treatises of Moral Theology, the Commandments of God, and the Precepts of the Church. I reserve the others for a second volume. I think the experienced reader will acknowledge that the cases are practical and real, such as are met with in actual life. The questions put after each case are intended to indicate some of the chief principles which have to be applied in the case, and the practical solution is given at the end. I have not thought it necessary in this book to give full answers to the questions proposed. They are book questions, and the answers to them may be found for the most part in any of the text-books of Moral Theology. For convenience I have often given a reference to my "Manual of Moral Theology." I thought it advisable to keep the cases in Latin as they were drawn up in that language, but as English is largely used in the conference cases of the clergy the answers to the questions and the solutions are almost wholly given in English.

THOMAS SLATER, S.J.

August 25, 1910.

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HUMAN ACTS

1

CONSTITUENTS OF A HUMAN ACT

Inter Titii sacerdotis parochianos et poenitentes est Paulus qui a pluribus annis ebrietati est addictus. Non tamen continuo Paulus inebriatur sed intervallis circiter duorum mensium sobrietati datis deinceps nunquam per mensem vel sex hebdomadas perfecte est sobrius. Titio vero eum monenti de damnis sibi et familiae ebrietate illatis necnon de scandalo aliorum et remedia proponenti Paulus dicit se non posse amplius se cohibere quominus statis temporibus tamquam brutum animal ad potum excessivum feratur omnibus motivis in contrarium bene cognitis sed nullatenus obstantibus. Titius quidem audivit de morbo voluntatis qui aboulia a quibusdam dicitur, et scit homines aliquando ebrietate fieri insanos, sed ejus poenitens in aliis rebus quando est sobrius quam maxime ab insania distat, nescit igitur quomodo sit Paulus sive intra sive extra confessionale tractandus. Unde quæritur:

1. Quid ad actum humanum et peccatum requiratur?
2. Num dentur in una materia amentes qui tamen in aliis sint sani?
3. Num habituarii qui liberum arbitrium perdiderint sint propterea insontes si vitio indulgeant?
4. Quid ad casum?

Solution

1. What is required for a human act and for sin to be imputable?

We are not responsible for those actions over which we have no control. We are responsible for those which we freely produce. Such are called by divines "human acts," and they proceed freely from the will with an intellectual knowledge of the end. Hence three conditions are required in order that an action may be imputed to us: (*a*) It must proceed from the will; all moral responsibility lies there; it is not sufficient if we are forced against our will to do it, nor if it proceeds merely from the reflex action of the nerves and muscles. (*b*) It must proceed freely from the will. If our will is inevitably determined to action by the antecedent circumstances, we can not be blamed for what follows; we could not help it. (*c*) In order that free will may act, a suitable object must be proposed to it by the intellect —*Nil volitum quin præcognitum*. An action which is against right reason and known to be such will be imputable to us as sin if those three conditions are verified.

2. Do monomaniacs exist?

Suarez and some other theologians denied that they did on the ground that capacity for free moral action depends on the power of apprehending general principles and drawing conclusions from them. But one who can not do this in one class of matters can not do it in others. In reply it may be said that this would be true if special matters did not exert a special disturbing influence on kleptomaniacs, for example. When certain objects are put within the reach of those unfortunates, the desire to steal them becomes so overpowering that the deliberative faculty is in

abeyance, and the resulting theft is not free. In other matters there may be no such disturbing influence at work, and kleptomaniacs are therein free and sane.[1]

3. Are those who have lost self-control through habitual indulgence in vice on that account guiltless?

This question supposes that self-control may be lost by habitual self-indulgence in vice. The fact is notorious. It does not follow that such people are not responsible for what they do in their insanity. In so far as they are the free cause of their loss of self-control, the evil that they do in this state will be voluntary *in causa*, like sins committed by a drunken man, and therefore imputable to them.[2]

4. Paul, the parishioner of Titius, has been addicted to drink for many years. However, he did not get drunk regularly; he would be sober for a couple of months, and then he would have a drinking bout for a month or six weeks, during which time he was never perfectly sober. Titius points out to him the ruin he is bringing on himself and on his family, and the scandal he causes to others. Paul asserts that he can not help it, and that he is driven to drink like a brute when the fit seizes him. This may be true. As Cardinal Mercier says: "Sans doute, sous diverses influences — hérédité, alcoolisme, débauche, habitudes vicieuses, certain régime des prisons, etc. — la responsabilité est, chez plusieurs sujets, atténuée; il est vraisemblable que chez quelques-uns elle n'est pas ou n'est plus suffisante pour justifier le qualificatif *criminel*. Il y a des monstres sociaux qui ne devraient pas tomber sous les coups de la justice pénale, mais contre lesquels la société a néanmoins le droit et le devoir de se prémunir ou de se défendre,

[1] Frins., De Actibus Humanis, part. i, nn. 236, 237.

[2] St. Thomas, Summa, I–II, q. 77, a. 7.

au nom de la mission générale de gouvernement qui lui incombe." [1] If what Paul asserts is true in his case, the best remedy would be to get him to go to a home for inebriates, or to undergo treatment for alcoholism. We must suppose the habit to have been voluntarily formed with at any rate some confused advertence to the danger incurred, and so Paul can not be held guiltless even if now he can not help getting drunk. But absolute loss of control should not readily be presumed. Between this stage and that of the temperate man there are innumerable grades of greater or less power of self-control. The confessor will be wise if he presumes guilt, but sometimes, as in Paul's case, leaves its degree to the judgment of God. If Paul can not go to a home, the confessor will prescribe the avoidance of occasions of sin, constant occupation, and work, preferably in the open air, fervent prayer for help to God, and the frequent reception of the sacraments; and eating an apple or drinking some harmless beverage may be suggested when the craving for drink comes on. He may also usefully advise Paul to join some Catholic association for the cultivation of temperance, such as the League of the Cross.

[1] Psychologie, vol. ii, p. 146.

2

VOLUNTARY IGNORANCE

Albertus juvenis Catholicus qui medicinæ studio incumbit ea intentione ut post studia peracta medicam artem exerceat multum temporis spatium voluptatibus etiam dare non dubitat. Parentes et magistri eum monent ut diligentius se preparet ad illum statum sat onerosum suscipiendum, attamen fere ut antea res procedunt. Statis temporibus examina haud infelici successu subit, quum semper sufficientis doctrinæ specimen præbeat, quamvis nonnulla in unoquoque periculo propter pigritiam ignoret. Tandem aliquando ad artem exercendam admittitur, et pergit ad civitatem quamdam ut ibidem victum arte sua quærat. Curam ægrotorum suscipit, et statim invenit se multa ignorare scitu omnino sibi necessaria; quum sæpe sæpius remedia a se præscripta nihil prodesse imo non raro morbum augere videantur. Post aliquot menses ita scrupulis conscientiæ angitur ut totum suum statum confessario aperiat et quid faciendum roget. Unde quæritur:

1. Quando ignorantia sit culpabilis?
2. Ex ignorantia invincibili actu malo posito, quo tempore et quomodo peccetur?
3. Quid ad casum?

Solution

1. When is ignorance culpable?

Ignorance is culpable if it concerns what we are bound to know and if it is voluntary. There is no guilt attaching

to ignorance about what we are under no obligation to know. Neither can we be blamed for ignorance which we can not help. The degree of culpability for voluntary ignorance about what we are bound to know will depend upon the seriousness of the matter and the degree of voluntariness in the ignorance. If the matter is serious and if there was great negligence in not procuring the requisite knowledge, grave sin will be committed. On the other hand, if either the matter be trivial or the negligence slight, no more than a venial sin will be committed.

2. When a bad action is done out of voluntary ignorance, is the sin committed when the agent culpably neglected to procure knowledge or when the act is done; and of what species is the sin?

Per se, inasmuch as formal sin consists in doing wrong or neglecting duty with advertence, formal sin is committed when the doer of a bad action, which is the result of voluntary ignorance, culpably neglects to procure the requisite knowledge. At the time when the bad action is done through ignorance the doer of it does not advert to the wrong that he is doing, and so the act can not be a formal sin at the time when it is done. Of course if the bad act is not merely the result of ignorance, but at the time when it is done there is some suspicion of its not being right, or some advertence to its malice, then the harm done will not only be voluntary in its cause, but also voluntary in itself. But then it will not be done out of voluntary ignorance, but out of malice here and now.

A sin of ignorance is of the same species as the act done out of ignorance would be if it were committed with knowledge. For the law which is violated by the sin is violated also by voluntary ignorance concerning it, inas-

much as every law imposes on those who are subject to it the obligation of obtaining knowledge of it, and voluntary ignorance is a violation of this obligation.

3. Albert neglected his work when he was a medical student. In spite of warnings from professors and parents he gave a great deal of time to enjoyment. In each examination he managed to show sufficient knowledge to pass, though there were some subjects of which he was ignorant. When he began to practise, he soon found out his deficiencies. His prescriptions often seemed to do harm to his patients instead of good. After some months he became so uneasy that he spoke on the subject to his confessor and asked him what he was to do. After satisfying himself that there are good grounds for Albert's scruples the confessor should tell him that he must give some time to study now, so as to make up for his idleness in his student days. He knows what subjects he neglected, and he should apply himself to those in the first place. Until he can make up for lost time he should not undertake cases where his ignorance is likely to be an obstacle to his treating them properly. On one pretext or another he may call in some other medical man, and forego his own fees in such cases. If he does what he can in this way, he need not give up his practice, as all serious danger of doing harm will be removed, and he will soon gain the knowledge without which he should not have begun to practise at all. He committed sin in neglecting his studies, and as the matter was serious, nothing less than the lives and health of his patients, and the negligence was apparently grave, the sin was a grave one. He must be sorry for this and resolve to make up for it as far as he can in the future and then he may be absolved.

3

MOTIONS OF CONCUPISCENCE

Philippus alumnus septemdecim annorum in quodam collegio catholico se pravos motus passum esse apud confessarium confitetur. Hic interrogat utrum iis consenserit, quod ille negat. Deinde confessario interroganti num causam eorum fortasse posuerit et quam, respondit aliquando eos oriri quasi spontanee, aliquando ex lectione librorum, aliquando ex conversatione cum aliis pueris erga quos carnalem fortasse affectum fovet, aliquando ex eo quod hos sit osculatus. Unde quæritur:

1. Quid sit concupiscentia?

2. Numquis ordo actuum quibus peccatum committi soleat distingui possit?

3. Num adsit peccatum in motibus primo-primis et secundo-primis qui vocantur?

4. Quid ad casum, et quod consilium quoad singula Philippo dandum?

Solution

1. What is concupiscence?

Concupiscence is commonly used in different senses by dogmatic and by moral theologians. Dogmatic theologians use it to signify the inclination to evil and the inordinate motions which we all experience within us, and which, as the Council of Trent teaches, are the effects of original sin.[1] In moral theology concupiscence is used in a wider sense to

[1] Sess. 5, Decree on Original Sin.

signify any movement of passion, or any movement of the sensible appetite toward its own proper good. Thus it is a general term used to signify emotions of love, hatred, joy or gladness, desire, sorrow, and anger. Such emotions are not in themselves either good or evil; their moral quality depends on their object, on whether they are voluntary or not, and on whether they are duly moderated. Thus, regulated love of what is good is praiseworthy, love of what is evil is wrong and blameworthy.

2. Can any order be traced in the acts by which sin is usually committed?

Yes, the first promptings of sin usually come through the senses. I see a beautiful piece of jewelry; by its beauty and luster it naturally attracts me. I can not help feeling this impulse; it is the necessary movement of the appetite toward an object which promises satisfaction. It is the *motus primo-primus* of the moralists. When such an emotion is excited, it attracts the notice of the intellect. The intellect begins to consider whether the incipient desire for the jewelry is right or wrong. If I have money to buy it and am willing to pay the price, the intellect sees nothing in the series of acts which conscience can condemn. But if I have not the money or I have no intention of parting with it, then it behooves me to put a curb on my desire. No harm is done if it stops at a mere velleity — "I should like to have that pretty thing if I could afford it." But such an imperfect desire if not kept under control is apt to issue in a definite purpose — "I like that and I will have it, by theft if need be." In this deliberate act of the will sin is first committed; the seeking for means and opportunity and the actual execution of the purpose only belonging to the accidental perfection of the sinful act.

3. Is there any sin in the movements of the sensible appetite called by theologians *primo-primi* and *secundo-primi?*

Those movements which are called *primo-primi* are antecedent to the exercise of the deliberative reason and therefore are not free, and so can not be sinful. Those called *secundo-primi* follow upon imperfect advertence to the morality of the movement in question, and so if the object or circumstances are bad, the movement will be bad also, and inasmuch as to some extent it is voluntary and free, to that extent it will be imputable to the agent. However, as the act is imperfect, and for mortal sin a perfect and consummated act is required, a *secundo-primus* movement can not be mortally sinful.

4. Philip, a boy of seventeen, confesses that he has had movements of impurity. His confessor asks him whether he consented to them, and he answers "No." Then the confessor asks him whether he caused them, and the boy answers that sometimes they arose spontaneously, sometimes from reading novels, sometimes from talking with other boys for whom he entertains a feeling of softness, and occasionally he has kissed these. The confessor should tell Philip to pay no attention to the impure movements which arise spontaneously, and to turn his mind away from them by thinking of something else. If the novels are lascivious and obscene, Philip commits a grave sin by reading them, inasmuch as he voluntarily and without justification puts the cause of strong temptations to impurity which will frequently be the cause of sin. If Philip has any such books, he should destroy them. If they are not lascivious, there will not be grave sin in reading them, and they may be permitted even to young people like Philip in moderation, for the sake of cultivating the imagination and style, and

gaining a knowledge of literature. The confessor, however, should warn his penitent against wasting too much time in such reading and against the dangers which frequently arise from it.

Philip should be told not to touch, fondle, much less to kiss the boys for whom he feels a sensual attraction. If such acts on his part have not hitherto led to grave disorder and sin, they will certainly do so before long. By such conduct he is developing passions which are very difficult to keep in order. He should be told to act in a manly and Christian manner towards his companions, and to treat them with respect — *Magna debetur puero reverentia.*

4

PRINCIPLE OF A DOUBLE EFFECT

Recentiores quidam rejiciunt principium duplicis effectus eo quod contineat petitionem principii, prima enim conditio quam statuit dictum principium ad actionis liceitatem exigit ut causa sit bona vel saltem indifferens; secundo, eo quod requirat ut non intendatur pravus effectus quamvis intentio non possit mutare naturam actionis externæ et liceat intendere occisionem injusti aggressoris cui exemplo S. Thomas istud principium applicet; in quo exemplo deest etiam tertia conditio, nempe ut bonus effectus non ex malo effectu sequatur; denique quarta conditio, viz. ut adsit causa proportionata, vera quidem sed juxta illos est in praxi inutilis et applicationis incapax.[1] Unde quæritur:

1. Quid sit principium duplicis effectus et ad quid inserviat?
2. Num dictum principium sit verum?
3. Quid de objectionibus recensitis sit dicendum?

Solution

1. What is the principle of the double effect, and of what use is it?

The first part of this question may be answered in the words of Dr. McDonald's own rendering of Lehmkuhl: "It is lawful to perform an action which produces two

[1] Ita fere Dr. W. McDonald, The Principles of Moral Science, p. 149.

effects, one good, the other bad, provided (1) the action, viewed in itself, is good or at least indifferent; (2) the agent does not intend the evil effect, but only the good (it is well to add in some cases, and provided there is no danger of subsequent evil consent or intention); (3) the good effect is produced as immediately as — that is, not by means of — the bad; (4) and there is a sufficiently weighty reason for permitting the evil effect."

The use of this principle often enables us to decide whether we are bound to abstain from some action because of its producing evil effects. If the action in question has nothing but evil effects, then of course it is itself wrong. But sometimes an action has both evil and good effects. Thus if I dig a well in my own land, I may obtain a supply of water, but this good effect may be accompanied by serious loss to my neighbor if my well dries up his water-supply. The question frequently arises whether or not the evil effect (in this example loss caused to my neighbor) makes the action (digging the well) wrong. The principle enunciated above lays down the conditions under which the action in question may be done, in spite of its producing evil effects.

2. Is the principle true?

Yes; it has the support of St. Thomas (I–II, q. 64, a. 7) and of most recent moralists. It may be proved also from the fact that when the conditions laid down are fulfilled, there is nothing wrong either in the object or in the circumstances of the action in question, and so it may be done, for we may do anything that has nothing wrong in it. The fact that the evil effect follows does not under the supposed conditions make the action wrong; we exercise our right, and regret that this can not be done with-

out some evil consequences which we do not desire, but only permit.

3. What is to be said about the objections mentioned in the case?

The first condition laid down in the principle is that the action viewed in itself must not be bad; but, says the objection, is not this the whole question at issue? No, it is not; there is no begging of the question in the principle. The morality of digging the well when it causes damage to my neighbor is in question, and the principle requires that this action of digging the well apart from the evil effect of causing damage to my neighbor should not be wrong in itself. If without the leave of the owner I proceed to dig a well in the property of my neighbor, the action in itself would be wrong; its malice would be at once apparent, it does not fulfil the first condition. But I have a right to dig a well in my own property, and so the first condition is fulfilled in the given example.

The second objection is that the question of intention does not arise, inasmuch as the intention can not change the nature of the external act. It is true that the intention can not change the physical nature of the external act, but it can change its moral quality. If I dig the well in my property to spite my neighbor and to deprive him of his water-supply, I commit a sin against charity, though the uncharitable intention does not change the physical nature of the external action so as to cause it to be against justice. The question of intention is therefore of importance. We need not here enter into the disputed question as to whether in self-defence one may intend to kill an unjust aggressor, or whether the intention should be exclusively directed to self-defence.

The third objection is that in killing an unjust aggressor in self-defence, to which St. Thomas applies the principle of the double effect, the good effect (the preservation of one's own life) follows from the evil effect (the killing of the aggressor). In reply it may be said that even if this be conceded, it would only follow that the principle is wrongly applied to this case; it would not follow that the principle is false or useless. But according to the mind of St. Thomas the killing of the aggressor does not follow from the act of self-defence, but both killing and self-defence follow immediately from the blow or wound inflicted. The distinction is subtle and not of great practical importance.

The fourth condition, that there should be a sufficiently weighty reason, is not useless nor incapable of being applied, as the last objection asserts. For charity requires that I should not seek a trivial advantage of my own at the cost of serious loss to my neighbor. If I can very well do without a new water-supply, I may not dig a well in my property which would ruin my neighbor by depriving him of the only water-supply available to carry on his business. On the contrary, if a new supply is as necessary for me as it is for him, charity does not require that I should forego my own advantage lest I should deprive my neighbor of an equal advantage. Charity does not bind with so serious an inconvenience.

5

VOLUNTARY PER ACCIDENS

Titius juvenis confitetur se lapsum carnis pati sæpius solere quando equitat. Interrogatus a confessario utrum pravæ delectationi consensum præstiterit, negat; ac iterum interrogatus utrum equitet ad istos motus procurandos, primo absolute negat, et dicit se potius equitare quia ista exercitatio sibi maxime placeat, at postea se corrigens dicit se non esse certum, fortasse se aliquantulum libentius propter dictum effectum istum modum exercitationis seligere. Confessarius vero his auditis dubitat utrum equitationem Titio interdicere debeat necne. Unde quæritur:

1. Quid sit voluntarium in se et in causa, et quando hoc agenti ad culpam imputetur?

2. Num effectus graviter pravus in causa tantum voluntarius semper sit peccatum mortale?

3. Quid ad casum?

Solution

1. What is meant by voluntary in itself and voluntary in its cause, and when is the latter imputed as sin to the agent?

That is voluntary in itself which is willed in itself and which is not merely foreseen to follow from something else

which is willed in itself. On the other hand, that is voluntary in its cause which is not willed in itself although it is foreseen that it will follow from something that is willed in itself.

That which is voluntary in its cause is imputable to the agent if it was foreseen, if it could be avoided, and if there was an obligation to avoid putting the action precisely because it produced the effect in question.[1]

2. Is a seriously bad effect which is only voluntary in the cause always imputable to the agent as a grave sin?

No; for no evil is imputable unless it is voluntary, and evil which is only voluntary in the cause, though it would be grave if it were willed in itself, will not necessarily be grave if it is only voluntary in its cause. For this cause may be only slightly wrong, or only slightly connected with the evil effect, and then the amount of voluntariness in the effect is only slight, and can not be more than a venial sin. If the evil only follows by accident from what is voluntary in itself, it can not be truly said to be voluntary at all, and unless there is some extrinsic reason, such as the necessity of avoiding injury to others or the necessity of obeying a lawful superior, it will not prevent a useful or otherwise licit action being performed lawfully.[2]

3. Ad casum. Confessarius nec debet nec potest Titio interdicere in casu equitationem. Nam quamvis sæpius exinde pollutionem patiatur, pravo tamen huic effectui consensum non præstat, nec est effectus voluntarius in se nec in causa, quia non sequitur per se ex equitatione sed solummodo per accidens. Equitatio enim nihil illicitum aut lascivum in genere luxuriæ in se continet, nec ratione

[1] Manual of Moral Theology, vol. i, p. 24. [2] Ibid.

damni alterius talem effectum specialiter cavere tenetur. Unde licet Titio equitare, et ei consulendum est ut omnem cogitationem et timorem illius pravi effectus abjiciat, nam exinde potius quam ex honesta aliqua actione pravi motus aliquando oriuntur.[1]

[1] Cf. St. Alphonsus, lib. iii, nn. 483, 484.

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6

VOLUNTARY IN THE CAUSE

Titius catholicus haud raro se inebriat et quum propterea frequentius Missæ auditionem die dominica omittat, immo ebrius uxorem verberet, quamvis ratione recuperata hoc audito multum doleat, et quum filius nacta occasione paternæ ebrietatis non tantum omittat sacrum præceptum audire sed totam diem dominicam in comessationibus et ludis cum sociis dissolutis transigat, hinc Titius confessurus dubitat quid et quomodo confiteri teneatur. Unde quæritur:

1. Quale peccatum sit ebrietas et in quo ejus malitia consistat?
2. Num peccata filiorum parentibus imputentur?
3. Quid ad casum?

Solution

1. What sort of a sin is drunkenness, and in what does its malice consist?

St. Paul enumerates [1] drunkenness among the sins which prevent those who commit them from entering the kingdom of God, and so it is a mortal sin. This should be understood of complete drunkenness, which deprives one of the use of reason, so that he does not know what he is doing and can not distinguish between right and wrong. Partial drunkenness is only a venial sin, unless by reason of scandal or harm done to health or fortune, or some similar extrinsic reason, it becomes a grievous sin.

[1] Gal. v. 21.

The malice of drunkenness does not consist merely in voluntarily depriving oneself of reason, for we may do that for a good cause, as we do when we take chloroform. Its malice consists in depriving oneself of the faculty of reason without good cause by yielding to an inordinate appetite for intoxicating drink. Drunkenness not only deprives one of the use of reason but also of the capacity to recover it for a considerable time.

2. Are the sins of children imputable to their parents?

Yes, certainly. "Parentes graviter peccant si quantum in ipsis est non curent ut bonis moribus imbuantur . . . pravorum consortia vitent, mandata Dei et ecclesiæ observent, sacramenta frequentent, a peccatis abstineant." [1]

3. Titius committed grave sin every time he got completely drunk so that he did not know what he was doing. We must suppose that he foresaw that he would not be able to hear Mass on the following Sunday when he got drunk, and so he is guilty of mortal sin on this account also. If he knew that he usually beat his wife when he got drunk, he committed sin also on this account, even though he was sorry afterward; his sorrow should have prevented him from getting drunk. If his son was of age to be corrected and compelled to go to Mass and avoid bad company, Titius was obliged to see to this, and he committed grave sin by neglecting his duty and by giving bad example to his son. The sin which he commits is against his obligation as a parent, and the sins of his son are imputable to him under this head; not that the father is guilty of the specific sins committed by his son on account of the father's neglect. Titius, then, must confess these sins with the number of times that he has been guilty of them.

[1] Busembaum apud St. Alphonsum, lib. iii, n. 339.

7

THE METHOD OF MORAL THEOLOGY

Titius sacerdos legit in quadam ephemeride articulum ab alio juvene sacerdote conscriptum de methodo theologiæ moralis, in quo sequentia inter alia proferuntur: "Multa desiderantur in libris textus qui in manibus versantur, unam enim partem tantum vitæ hodiernæ tangunt; agunt de peccatis dum officia hominum in vita privata et sociali tractari debent; methodus non est scientifica cum singulæ quæstiones proponantur quibus sæpe varia responsa dentur tot allegatis auctoribus dissentientibus ut scepticismum revera generet. Loco hujus methodi casuisticæ modus scientiæ modernæ accommodatus est sequendus, ita ut solidum fundamentum primo ponatur, nempe: Illud esse ethice malum quod malos effectus producit; deinde, instituta analysi actuum humanorum, historia etiam adscita, assurgere licet ad principia generalia scientifice certa ac verificata." Videtur Titio methodum tot seculorum experientia in Ecclesia comprobatam tali censura non esse dignam, turbatus est tamen nec scit quid sit respondendum. Unde quæritur:

1. Quid sit theologia moralis?
2. Quid de opinionibus anonymi scriptoris?

Solution

1. What is Moral Theology?

Moral Theology is defined by Fr. Bucceroni: Illa theo-

logiæ pars quæ innixa jure divino per revelationem manifestato inquirit quid liciti quid illiciti sit in humanis actionibus ut has dirigat in ordine ad vitam æternam.[1] Moral Theology, then, takes its principles from revelation, and because they rest on revelation they have a more secure and certain foundation than human reason could afford. But moral theology does not cover the whole field of Christian conduct. Its object is not to place high ideals of virtue before the people and train them in Christian perfection. Its task is much more restricted and humble. It lays down rules for determining what is right and what is wrong according to the teaching of the Christian faith. Its primary object is to teach the priest how to distinguish what is sinful from what is lawful, so that he may fruitfully administer the sacrament of Penance and perform the other duties of his sacred ministry. It is not intended for edification, nor for the building up of character, nor, it may be added, is it intended to teach people how to shake off the burden of the moral law, or to minimize its obligations.

2. What is to be said about the opinions of the anonymous writer?

The perfect text-book of moral theology has not yet indeed been written, if it is ever destined to be written. It certainly could not be written on the lines laid down by the anonymous critic. Outside the Catholic Church there is a tendency to regard moral problems from the point of view of evolution, and from the purely naturalistic standpoint. The critic seems to have been reading some modern author of this school, and to have become infected with his spirit. While we remain Christians it would be foolish and disastrous to abandon our secure position in order to

[1] Instit. Theol. Mor., vol. i, n. 1.

adopt the constantly changing systems of our adversaries. We have seen why sin is so prominent in our text-books, but we may add here that in deciding what is sinful we are also virtually laying down duties, for sin is only a violation of duty. The method of moral theology is strictly scientific, but it proceeds by way of deduction from principles which rest on revelation, not by way of induction. The varying answers given in the books to particular questions do not concern moral principles, but their application to particular cases. In these questions it is often impossible to reach any certain conclusion, and so, perforce, different opinions have to be acknowledged, but this does not produce skepticism. We hold fast the truth, but we know the limits of our knowledge, and we know how to arrive at a practical decision when there is a conflict of opinions.

The foundation which the critic proposes for the science of morals is by no means solid. Consideration of the effects of an action often enables us to decide its moral quality, and the ordinary text-books do not neglect this consideration. But much depends upon what we mean by the effects of an action. Evolutionary ethics restricts its attention to the temporal effects of the present life, and those effects are often so subtle, and yet so far-reaching, that is it very difficult to estimate them at their proper value. Even if this could be done, this evolutionary criterion upsets the whole perspective of moral guilt. Judged by their temporal evil effects, how should we classify in the order of guilt (*a*) the theft of five shillings, (*b*) indulgence in an immodest thought, (*c*) the denial of the goodness of God, and (*d*) an unkind speech to one's neighbor? We do not know all the bad effects of sin, but

among them we must assuredly reckon the displeasure of Almighty God, the loss of heaven, and the sufferings of purgatory and hell. In our estimate of evils we shall go very much astray if we leave the chief of all out of account.

We may and should make use of history in moral theology, especially where positive law is concerned; but with the Catholic theologian it will not occupy the all-important position that it holds in the evolutionary science of ethics.

Most of the teachings of Catholic morality have been sufficiently verified by the experience of twenty centuries. But as they rest on faith, and faith is the conviction of things that appear not, we shall not be able to verify them fully in this life, and to claim the right to do it is virtually to abandon a life of faith, and seek to live by knowledge, which one can not do and remain a Christian.

8

ON REFERRING ONE'S ACTIONS TO GOD

Gregorius sacerdos in quadam catechesi ad ostendendam caritatis erga Deum excellentiam asserit bonitatem et meritum cujuscumque humanæ actionis a caritate dimanare; etenim ut bonæ sint simpliciter actiones actuali vel virtuali intentione ad Deum sunt dirigendæ juxta Apostoli præceptum: "Sive manducatis sive bibitis, sive aliud quid facitis, omnia in gloriam Dei facite;" "Omnia vestra in caritate fiant;" adeoque a caritatis initio procedere debent; ut vero hominis justi actiones de condigno meritoriæ sint, ex actu caritatis virtualiter saltem exercendas esse dicit, ita ut si quem cur operetur interroges, statim respondere possit: "Ad Dei placitum et gloriam." His auditis, Liberius sacerdos hanc doctrinam Jansenistarum erroribus redolere contendit, verba Apostoli consilium tantum continere asseverans, neque virtualiter ad Dei gloriam referendas esse actiones ut bonæ sint; alioquin infideles qui nec de Deo cogitant nec Eum agnoscant semper in operando peccarent; quod ab Ecclesia damnatum est; ad meritum vero de condigno sufficere contendit ut opus moraliter bonum ab homine fiat in statu gratiæ constituto. Unde quæritur:

1. An actus quilibet ut bonus sit debeat referri ad Deum?

2. An ut actus meritorii sint de condigno caritatis influxus ita requiratur ut vel actu vel virtute ab eo procedere

debeant? et quatenus affirmative quomodo illud "virtute" sit intelligendum?

SOLUTION

1. Ought every act to be referred to God, in order that it may be morally good?

Theologians agree that every action in order to be morally good must be referred to God, our ultimate end, in some way. The Jansenists said that this reference to God must be explicit, for the Apostle says: "Whether you eat or drink or whatsoever else you do, do all to the glory of God."[1] The common opinion of Catholic theologians is that an implicit or virtual reference to God is sufficient, which consists in this, that the agent apprehends that the action is in accordance with right reason, or is not sinful, and that at stated times he refers himself and all that he is and does to God.[2]

2. In order that an action may be meritorious *de condigno* must it proceed actually or virtually from charity, and if virtually, how is this to be understood?

This is a disputed point among theologians. Some think with Suarez that it is enough if an action is done out of any supernatural motive for it to be meritorious *de condigno* if the other conditions are verified. Thomists require that an action should proceed from charity in order to be meritorious *de condigno*. But in requiring the influx of charity they only require that the agent should be in the state of grace, and that at the proper time he should have referred himself and all that he does to God by an act of charity. How often that act of charity must be elicited they do not accurately define. If these conditions be fulfilled, the act

[1] 1 Cor. x. 31. [2] Tepe, Instit. Theol. Mor., vol. i, n. 96.

proceeds virtually from charity, even though the agent does not expressly think of God.[1]

It follows from what has been said that in general Gregory is right according to the opinion of the Thomists. But he should not propose a theological opinion as if it were Catholic doctrine, and he should be careful not to exaggerate, for there is some slight exaggeration in that he says that if the agent is asked why he does something, he should be able to answer at once, "For God's honor and glory." On the contrary, according to the Thomist opinion, any honest motive will be sufficient for merit in one who is in the state of grace, for the action will then proceed virtually from charity.

Liberius was wrong in saying that Gregory's teaching was Jansenistic, for he expressly stated that a virtual reference to God is sufficient. In holding that the words of the Apostle contain only a counsel Liberius followed the opinion of St. Bonaventure and many others. Much depends on what he meant by *virtually*, but if he denied that our actions must be virtually referred to God in the sense that the agent must apprehend that they are according to right reason, and thus referable to our last end, he was wrong. Nor does it follow from this that the actions of those who do not think of God are sinful, for if they apprehend them as good and intend them as such, they virtually refer them to God. In asserting that it is sufficient for merit that an action should be done by one who is in the state of grace, he follows St. Thomas and many others, but to complete the theory he should mention the influx of the act of charity which must be elicited at the proper time; otherwise the state of grace will be lost, inasmuch as a grave precept has not been fulfilled.

[1] Tanquerey, Synop. Theol. Mor., vol. ii, n. 203.

9

MORALITY NOT IN THE EXTERNAL ACT

Titius ac Caius sacerdotes quandoque de materiis ad moralem spectantibus colloquuntur. Quodam die colloquium instituunt de subjecto moralitatis actuum humanorum. "Veneror," inquit Caius, "praxim Ecclesiæ, nam ut ait Angelicus 'Maximam habet auctoritatem Ecclesiæ consuetudo quæ semper est in omnibus æmulanda; quia et ipsa doctrina catholicorum doctorum ab Ecclesia auctoritatem habet' (II–II, q. 10, a. 12); attamen intelligere nunquam potui necessitatem confitendi actum externum peccati, sed mihi videtur debere sufficere confiteri actum internum, quia malitia peccati est ex voluntate, et species peccati interni et externi est eadem, 'Omnis qui viderit mulierem ad concupiscendam eam jam mœchatus est eam in corde suo.'" Titius fatetur sibi eamdem difficultatem esse auctam ex eo quod juxta plures doctores effectus peccati non est confitendus, quum videretur potius confitendus quam actus externus, utpote saltem voluntarius in causa. Quæritur:

1. Num moralitas actuum humanorum sit in actu interno an externo?

2. Quomodo differant effectus peccati et actus externus peccati?

3. Quomodo respondendum difficultatibus Caii et Titii?

Solution

1. Is the morality of human acts in the internal or in the external action?

The morality of human acts, or their goodness and badness, is there where freedom resides, for it is only because an action is freely produced by the agent that it is imputable to him. Freedom, however, is formally and strictly only in the will, and an external act is only called free inasmuch as it proceeds from a free will.

2. How do the effect of a sin and the external act of sin differ?

Three stages may be distinguished in a bad action, as, for example, murder. First of all there is the deliberate purpose to commit the crime; then the blow is struck; finally, perhaps after an interval of some days or weeks, death ensues. The internal and the external act, or the purpose and the blow, form together one complete human action, of which the formal part is the purpose and the blow is the material. From this complete human act we must distinguish its effect which follows after some time, as we here suppose for the sake of clearness. The effect is due to a free exercise of will, and is therefore imputable to the agent, but it is not a human act; it is the consequence of a human act.

3. What is to be said in answer to the difficulties of Caius and Titius? Caius does not see the reason why the external act should be confessed if the malice of sin is in the internal act of the will. Caius confounds two different things — sin and the malice of sin. The malice of a purpose to commit murder is the same as that of actual murder, but a purpose is an internal act and actual murder is a

complete human act made up of the internal and of the external act of execution of the purpose. They are, then, two different human acts, and therefore they are two different sins; for sin is a bad human act, and so one must not be confessed for the other.

Titius has the same difficulty, and in his case it is increased because many theologians allow that the effect of a sin need not be confessed, although it is voluntary in its cause. In answer to this it may be said that the effect of a sin is not itself sin, and only sins need be confessed. On the contrary, an inordinate external act is a sin, for sin is any word, deed, or desire against the law of God. The effect of an action may follow while he who put its cause is asleep, and a man can not commit sin while he is asleep. The effect might even follow after the death of the person who caused it, and certainly a man can not commit sin when he is dead.[1]

[1] Cf. Lugo, De Pœnitentia, disp. 16, sec. 9.

CONSCIENCE

1

THE AUTHORITY OF CONSCIENCE

Titio qui studio theologiæ moralis incumbit theologi parum videntur cohærenter loqui de obligatione sequèndi conscientiam ac de obligatione judicium proprium judicio Ecclesiæ subjiciendi. Dicunt enim conscientiam esse vocem Dei, præconem Dei, teneri hominem sequi conscientiam sive rectam sive erroneam; immo Cardinalis Newman hæc habet; "That divine authority, the voice of conscience, on which in truth the Church herself is built. . . . Did the Pope speak against conscience he would commit a suicidal act. He would be cutting the ground from under his feet."[1] Unde quidam modernista ait: "When authority is dumb or stultifies itself, private conviction resumes its previous rights and liberties. It sent us to authority in the first instance, not by a suicidal self-contradictory act; but in basing our trust upon reasons and sentiments it thereby assigned a limit to that trust which is reached as soon as authority would seem to violate those reasons or sentiments."[2] Et alius scriptor: "To

[1] Letter to the Duke of Norfolk, p. 60.

[2] G. Tyrrell, A Much-abused Letter, p. 57. This was a fundamental point in the late Fr. Tyrrell's teaching. He developed that teaching more fully in the last essay published in his book entitled "Through Scylla and Charybdis." The following extracts are taken from that essay.

our own mental and moral conscience all doctrines and laws must make their last appeal, and we have a distinct as well as a corporate personality." [1] Admissa vero hac doctrina Titius non videt quid sit reprobandum in theoria judicii privati Protestantium. Unde quæritur:

1. Quid et quænam sit norma moralitatis?

"We have long since not merely resigned ourselves to a silent and a hidden God, but have come to recognize our seeming loss as a priceless gain. For now we have learned to seek Him where alone He is to be found, and seen, and heard; near and not far; within and not without; in the very heart of His creation, in the center of man's spirit; in the life of each; still more in the life of all. It is from the Sinai of Conscience (individual and collective) that He thunders forth His commandments and judgments; it is from the heights of His holiness that He looks down in pity upon our earthliness and sinfulness; it is in His Christ, in His saints and prophets, that He becomes incarnate and manifest, and that He tabernacles with the children of men."

"Thus it is in the widest, the most enduring, the most independent consensus that we possess the fullest available manifestation of that divine spirit, partially and imperfectly manifested in our own individual mind and conscience — the spirit of Truth and Righteousness, the source of all moral power and authority — God revealed in man. Authority, then, is not an external influence streaming down from heaven like a sunbeam through a cleft in the clouds and with a finger of light singling out God's arbitrarily chosen delegates from the multitude, over and apart from which they are to stand as His vicegerents. Authority is something inherent in, and inalienable from, that multitude itself; it is the moral coerciveness of the Divine Spirit of Truth and Righteousness immanent in the whole, dominant over its several parts and members; it is the imperativeness of the collective conscience."

In an article contributed to the Hibbert Journal, January 1910, Baron F. von Hügel wrote concerning this doctrine of Fr. Tyrrell: "In substance he [Fr. Tyrrell] was maintaining, as to the Popes' powers, nothing but what Cardinal Bellarmine, the greatest of the anti-Protestant theologians, and what Cardinal Newman, so emphatically a lover of authority, teach concerning conscience and the Pope — the latter in his *Letter to the Duke of Norfolk* — backed by countless theologians, saints, and councils." ! ! !

[1] M. D. Petre, Catholicism and Independence, p. xi.

2. Num inter conscientiam et infallible Ecclesiæ judicium conflictus oriri possit?

3. Utri in casu veri conflictus inter conscientiam et Papam esset obediendum?

4. Quid ad Titii difficultatem?

Solution

1. What is the norm of morality?

Because we are free we can choose whether we will do good or evil. We ought to do good, but how are we to know what is good? There should be some rule or norm which tells us what is good and what is evil. Catholic theologians agree that the proximate and subjective norm of morality is conscience, or a practical judgment of the reason which tells us that such a particular action must or may be done or omitted. Conscience applies the objective norm of morality which is law, and all law is based on the eternal law of God, which bids us observe right order and forbids us to violate it.

2. Can a conflict arise between conscience and an infallible decision of the Church?

No, this is not possible. For an infallible decision of the Church has for its subject-matter some truth of the faith or some rule of morality, whereas conscience is only concerned with the application of general rules to a particular action which I am contemplating here and now. The field of infallible decisions and that of conscience are different, and they can no more come into collision with each other than can two trains on different lines. It is true that conscience may conflict with a particular command of a Pope, but the Pope is not infallible when he gives a particular command.

3. In case of a conflict between the Pope and conscience, which must be obeyed?

All Catholic theologians agree that in case of a real conflict when a certain conscience tells me that what a superior commands is wrong, I must obey conscience and disobey the superior, whoever he may be.[1] Of course before disobeying the command of a lawful superior in such a case I must make sure of my ground. I must use all available sources of information so that I may be sure that my conscience is right and not erroneous. If this is done, conflicts between the Pope and the individual conscience will very seldom occur.

4. What is to be said about the difficulty of Titius?

From what has already been said it will be clear that theologians by no means contradict themselves when they teach that conscience is the voice of God and that it must be obeyed as such, and at the same time insist on the duty of submitting one's own judgment to the authority of the Church. Conscience is indeed private judgment, but its sphere is not that of ecclesiastical decisions. Private judgment is supreme when it tells me that this particular action must be done or not done. On the other hand the Pope is supreme for Catholics when he teaches *ex cathedra* that some doctrine belongs to Catholic faith or practice. Conscience says nothing about the truth or falsehood of such propositions as constitute the sphere of infallible decisions; it is restricted to questions whether this particular action which I am contemplating is to be done or not, and with this the Pope's infallible authority can not conflict. What Cardinal Newman said is true; if the Pope spoke against conscience, he would speak against God, from

[1] St. Thomas, De Veritate, q. 17, a. 5.

whom all his authority is derived, and thus he would cut the ground from under his feet. The modernist doctrine is pure Protestantism, inasmuch as it asserts that private judgment is the final court of appeal in matters of Catholic faith and practice, and not the Church. It is plain that the authority of Cardinal Newman can not be invoked for this Protestant theory.

2

PROBABILISM NOT CONDEMNED

Auctor recens probat ut sibi videtur probabilismum adversari judicio Ecclesiæ dato ab Alexandro VII, Innocentio XI, Innocentio XII, et Clemente XI, immo et rationi quatenus debeo sincere tendere ad convenientiam actionis meæ cum ipsius actionis moralitate objectiva, quod haudquaquam præsto quum eligo normam quæ meo judicio prædictæ moralitati probabilius adversatur quam cum ea convenit. Putat ille his argumentis systema probabilismi esse explosum, adhuc vero sustineri propter propensionem hominum ad id quod facilius est, et propter magnum influxum quem exercuit Societas Jesu in scientiam theologicam. Unde quæritur:

1. Quid sit systema theologiæ moralis, et quomodo differant probabilismus et æquiprobabilismus?

2. Quid responderi possit argumentis recentis illius auctoris?

3. Num probabilismus propria doctrina Societatis Jesu merito vocari possit?

Solution

1. What is meant by a system of moral theology, and how does probabilism differ from equiprobabilism?

By a system of moral theology is meant a body of rules which enables a person to form a certain conscience in cases

of doubt where direct certainty as to the lawfulness of an action can not be had. Thus probabilism is that system of moral theology according to which it is lawful to follow a solidly probable opinion even against a more probable opinion in favor of the existence of a law which would forbid the action when the sole question is one about the lawfulness or unlawfulness of the action. Equiprobabilism only allows one to follow an opinion in favor of liberty against such a law when the opinion is equally or almost equally probable with that in favor of the law. Equiprobabilists also add to this a subsidiary rule to the effect that in case of doubt whether a law hitherto in force has ceased to be obligatory, it must be obeyed as long as it is not certain that it has ceased to be of obligation.

2. What answer may be given to the arguments of the recent author alluded to?[1]

The recent author alluded to confounds two very different things — the private opinion of a Pope, and a Pope's authoritative decision, which is the judgment of the Church. As Benedict XIV explains in his classical work *De Synodo Diœcesana*, the private opinion of a Pope has no more weight than that of another theologian of equal learning and virtue. It is only when he gives an authoritative decision — when he acts as Pope — that he expresses the judgment of the Church. It may be conceded that the Popes mentioned were, as theologians, adverse to probabilism, but they never condemned it authoritatively. Of all the proofs of his contention that the recent author adduces, the strongest, as he confesses, is the decree of Innocent XI, and we will give here the authentic version of that decree to show what it really prescribed.

[1] L. Wouters, C.SS.R., De minusprobabilismo.

Feria 4, die 26 Junii 1680

"Facta relatione per Patrem Lauream contentorum in literis Patris Thyrsi Gonzalez Soc. Jesu SSmo D.N. directis, Eminentissimi DD. dixerunt quod scribatur per Secretarium Status Nuntio Apostolico Hispaniarum ut significet dicto Patri Thyrso quod Sanctitas Sua benigne acceptis ac non sine laude perlectis ejus literis, mandavit ut ipse libere et intrepide prædicet, doceat, et calamo defendat, opinionem magis probabilem, necnon viriliter impugnet sententiam eorum qui asserunt, quod in concursu minus probabilis opinionis cum probabiliori sic cognita et judicata, licitum sit sequi minus probabilem, eumque certum faciat quod quidquid favore opinionis magis probabilis egerit et scripserit gratum erit Sanctitati Suæ.

Injungatur Patri Generali Societatis Jesu de ordine Sanctitatis Suæ ut non modo permittat Patribus Societatis scribere pro opinione magis probabili et impugnare sententiam asserentium quod in concursu minus probabilis opinionis cum probabiliori sic cognita et judicata, licitum sit sequi minus probabilem; verum etiam scribat omnibus Universitatibus Societatis mentem Sanctitatis Suæ esse, ut quilibet prout sibi libuerit libere scribat pro opinione magis probabili et impugnet contrariam prædictam; eisque jubeat ut mandato Sanctitatis Suæ omnino se submittant." [1]

There is obviously no condemnation of probabilism in this decree, neither is there any condemnation in the other documents alluded to by the recent writer.[2]

The recent author's argument from reason is weaker than his argument from authority. It amounts to this. We

[1] Lehmkuhl, Probabilismus vindicatus, p. 82.
[2] Cf. Lehmkuhl, *l.c.*, p. 80 ff.

are under the obligation of sincerely trying to make our actions agree with the objective rule of morality. Therefore we are under an obligation of following the more probable opinion. The antecedent of this argument is true when the objective rule of morality is known. If there is no known objective rule of morality which binds me in the case in point, I am left to my liberty. The consequent is false. It gratuitously supposes that the opinion which seems to the agent the more probable is more in accordance with the objective rule of morality. What seems more probable to one is often less probable to others, and even to the same person at another time. And even if we grant that a more probable opinion is more in accordance with the objective rule of morality, it does not make that rule certain. And a certain obligation can not arise from an uncertain law else the effect would surpass its cause.

3. Can probabilism be called with truth the peculiar doctrine of the Society of Jesus?

No, it can not. As Fr. Oliva, who was General of the Society when the decree of Innocent XI was issued, asserted, there is no prohibition in the Society against defending probabiliorism or any other recognized system of morals. The long list of authors who have taught probabilism which St. Alphonsus gives in his Dissertation published in 1755 contains names belonging to all schools of theology. Probabilism was first formulated by Medina, a Dominican, and its first chief defenders were also Dominicans.

3

A NEW METHOD OF FORMING ONE'S CONSCIENCE IN DOUBT

Juxta recentem quendam auctorem[1] quæstio utrum operariis agere liceat secundum regulam societatis operariorum (*Trades-union rule*) quæ sit probabiliter injusta solvi potest comparando damna quæ ipsis sequerentur nisi ita agerent cum damnis dominorum quæ sequerentur si ita agerent. Ex duobus enim malis minus eligere licet.

Societas igitur quædam operariorum prohibet quominus muratores lateres plures quam quingentos quotidie collocent quamvis facile septingentos collocare possent. Regulam probabiliter injustam si supponamus, et majori damno fore operariis quam dominis nisi societati obediant, vellet Titius sacerdos scire si eis juxta datam regulam recenter statutam agere liceat. Unde quæritur:

1. Num semper opinionem probabilem sequi liceat?
2. Si non semper liceat, quomodo probabilismus norma universalis dici possit?
3. Quid ad casum?

Solution

1. Is it always allowed to follow a probable opinion?

No, it is only allowed to follow a probable opinion when the only question is whether the action be sinful or not. If there is also question of an end which must be gained, or a

[1] Dr. W. McDonald, Principles of Moral Science, p. 213.

probability of infringing the certain right of another, or if reverence for a sacrament forbids one to expose it to the danger of being null and void by using a probable opinion, the use of a probable opinion in these circumstances is not lawful.

2. How, then, can probabilism be called a universal rule?

Probabilism is a universal rule for forming a certain conscience in cases where there is no certain law which forbids the action contemplated. But there is a certain law which forbids one to jeopardize the attainment of an end which must be gained. The law which makes the attainment of the end obligatory makes it also obligatory to use safe means, not merely probable means, to attain it. And so an Anglican who thinks that Anglicanism is probably the true form of Christianity is not justified in exposing his salvation to risk by remaining an Anglican. The certain law of justice forbids me to do anything which will probably injure the undoubted right of another. Reverence for God and for sacred things forbids me to expose a sacrament to the probable danger of nullity without necessity, and then necessity does away with the irreverence.

3. What is to be said to the case?

The rule that we may choose the less of two evils is applicable where we are under the necessity of choosing one of them, as in perplexities of conscience. Thus if a priest remembers at the *Canon* when saying Mass that he is not fasting, he may think that he will commit sin if he goes on by violating the law of the Church about fasting celebration, and also that he will sin if he breaks off the Mass to the scandal of the faithful and against the rubrics. He must either go on or stop. In such a perplexity sound morality

teaches that he must choose the lesser evil. But if two courses of action are proposed to me, both wrong, and there is no necessity for me to adopt either, I must avoid both. Not only greater evil, but less evil also is to be avoided. The maxim that of two evils we must choose the less is inapplicable here. And so I must not violate the right of another in order to save myself from ruin. I could not lawfully steal five pounds from a millionaire even though it would save me from bankruptcy, while the loss would not be felt by him. The doctrine proposed in the case appears to offend against these principles of sound morality.

A bricklayers' union makes a new rule that no member must lay more than 500 bricks daily, though 700 could be laid easily. This rule is supposed here to be probably unjust, because by contract the bricklayers bind themselves to do a fair day's work. The employer has a certain right to a fair day's work; 500 bricks a day is probably not a fair day's work; and so the bricklayers do not fulfil the terms of their contract entered into before the new rule was made, and sin against justice. It is as if I paid a debt of five pounds with a bank-note which is probably forged. It will be no defence for the bricklayers to say that they will suffer more than the employer if they do not obey the rule laid down by the union. Even if this were conceded, it would not be lawful to injure the employer in order to save themselves from loss.

4

AN ERRONEOUS CONSCIENCE

Caia confitetur se Missam de præcepto omisisse, interrogata vero a confessario utrum sua culpa illam omisisset, respondet se ægrotasse nec sibi a medico fuisse permissum e cubiculo egredi. Bene confessarius percipit Caiam objective nullum peccatum commisisse evidenter tamen putare se peccasse ob Missam die de præcepto non auditam, unde dubius est utrum saltem subjective peccasset necne. Hinc quæritur:

1. Qualis conscientia requiratur ad honeste agendum?
2. Quid sit conscientia erronea et quomodo obliget?
3. Quale peccatum committatur si contra conscientiam erroneam quis agat?
4. Quid ad casum?

Solution

1. What sort of a conscience is required in order to act honestly?

Before doing anything the conscience of the agent must at least implicitly pass judgment on the morality of the action, so that the agent judges for certain that this action which he contemplates is allowable. Before many of our actions we are not perhaps conscious of forming such a moral judgment, nor is it necessary to do this explicitly, because we ordinarily act from habit; but whenever we act consciously, at any rate an implicit judgment concerning its

morality precedes the putting of the action. That judgment must not be a doubting one, but certain at least with the subjective certainty which excludes all prudent doubt about the morality of the action. *For all that is not of faith is sin.*[1] In this text it is clear from the context that St. Paul understands by *faith* a conviction that the action is right; in other words, a certain conscience of its morality.

2. What is an erroneous conscience and how does it oblige?

An erroneous conscience is an erroneous judgment about the morality of an action; it decides that what is wrong is right, or what is right is wrong. As conscience is the subjective rule of conduct and we are bound to follow it, therefore we are bound to follow an erroneous conscience when it is certain and no wise doubtful. If we do not do this, we act against conscience and commit sin. It may be that we have an erroneous conscience on the point through our own fault, inasmuch as we did not care to instruct and educate it aright, or wilfully closed our eyes to the truth. If this was the case, the objective evil which we do through an erroneous conscience is voluntary in the cause and imputable to us, but at the time when it is done it is subjectively right as it is according to conscience.

3. What sort of a sin is committed by acting against an erroneous conscience?

The sin committed in this case is of that species which it is supposed to belong to by the erroneous conscience. This follows from the fact that even an erroneous conscience is the rule and measure of subjective morality. The species and gravity of the sin are measured by the rule.

4. The case. Caia confessed that she had omitted Mass

[1] Rom. xiv. 23.

on a day of obligation. She had been ill on the day and had been forbidden to go out by her doctor. Of course there was no objective sin, but did she commit sin by going against her erroneous conscience which judged wrongly that the omission was sinful? There was probably some confusion in Caia's mind; she can hardly have thought that she was committing sin by not hearing Mass when she could not go on account of illness and because the doctor forbade her to go. Even if she thought that she was committing sin, she nevertheless would not do so for want of liberty if she was physically too ill and weak to go. If she could physically go, and if she thought that she was bound to go, she committed a sin of violation of the precept of hearing Mass on account of her erroneous conscience.

5

A DEBT PROBABLY PAID

Titio neo-confessario Caius se debitum quinque librarum sterlinarum dubia moneta solvisse confessus est. Titius recordatus casum similem apud theologos disputationi occasionem dare solutionem vero certam memoria quum non retineret, petiit ut proxima hebdomada Caius ad ipsum reverteretur. Interim duobus sodalibus sacerdotibus quæstionem solvendam proposuit. Primus respondit certam obligationem incerta solutione impleri non posse, ac proinde totum debitum iterum esse solvendum; alter autem quum probabiliter solutio sit facta, nihil manere faciendum. Titius igitur adhuc dubius de responso Caio dando quærit:

1. In quo consistat differentia præcipua inter probabilismum ac æquiprobabilismum?

2. Num uti liceat probabilismo ubi agatur de probabili alterius damno?

3. Quomodo regula universalis ad conscientiam efformandam dici possit probabilismus quando casibus pluribus applicari nequeat?

4. Quid ad casum?

Solution

1. What is the chief difference between probabilism and equiprobabilism? In spite of theoretical differences on the question of the chief formula employed to form a conscience in case of uncertain and conflicting opinions about the law-

fulness of an action, in practice there is virtual agreement between moderate probabilists and equiprobabilists on the main point. This is seen in the doctrine and practical solutions which are common to both schools. However, there is a difference of some importance between them on a subsidiary rule. When it is solidly probable that a law has ceased to bind, either because it is probably abrogated or because it has probably been complied with, probabilists deny that any obligation remains in such circumstances. On the other hand equiprobabilists affirm that the obligation remains until it has been complied with for certain, or at least until it is certainly more probable that it has been complied with. They admit that St. Alphonsus followed other probabilists in this question in the earlier editions of his "Moral Theology," but they assert that he afterward changed his opinion. The chief reason alleged for their doctrine by equiprobabilists is the principle of possession — in doubt the condition of him who is in possession is the stronger. Therefore, they conclude, when it is not practically certain that the law has been complied with, inasmuch as it is in possession, the obligation still remains. Probabilists deny that the law can be said to be in possession when there is a solidly probable opinion that it has been complied with or has ceased to exist. In order that the principle of possession may be applied the possession must be a certain fact, and it is not a certain fact if it has probably ceased. Furthermore, the principle is applicable in its proper sense to a case of negative doubt, and when there is a probable opinion against the obligation, it is not a case of merely negative doubt.

2. See the answer to this question, p. 54.
3. See the answer to this question, p. 55.

4. The case. Caius confesses to Titius his confessor that he has paid a debt of five pounds with money which was probably false. In doing this he committed a sin against justice, and he should repent of it. As there was a probability that the money paid was false, it was not worth five pounds, and so Caius did not pay his debt in full. But now, on the other hand, it is probable that the debt has been paid; has Caius any further obligation of making restitution? The creditor has not any certain right to further payment; he has *ex hypothesi* probably received payment in full, and thus no certain obligation rests on Caius of making further restitution. He committed sin in exposing himself to the probable danger of injuring his neighbor, but as it is not certain that any injury was in fact inflicted on his neighbor, Caius is not now bound to make restitution.[1]

[1] St. Alphonsus, lib. iii, p. 562.

6

A CONFLICT OF OPINION

Cæcilia confitetur varia peccata gravia contra sextum Titio confessario qui post interrogationes factas invenit eam versari in proxima occasione peccandi contra istud præceptum. Interroganti Titio utrum possit eam occasionem derelinquere respondet Cæcilia alium confessarium dixisse ipsam ad hoc non teneri, quum sit occasio necessaria. Post alias interrogationes Titius judicat hanc sententiam esse prorsus falsam, et Cæciliam posse cum aliquo quidem at non cum gravi incommodo eam occasionem relinquere. Attamen nescit utrum debeat obligationem imponere eam relinquendi, cum adsit contrarium judicium alterius confessarii: unde quærit:

1. Num possit pœnitens tuta conscientia sequi judicium confessarii?

2. Num possit confessarius permittere pœnitenti ut sequatur sententiam quam credit probabilem, quam tamen confessarius falsam judicet?

3. Quid ad casum?

Solution

1. May a penitent follow the opinion and direction of his confessor with a safe conscience?

Yes; in general in a case of doubt the penitent may follow the advice of his confessor whom he has reason to believe is a good and prudent man. By consulting his con-

fessor where he can not form his conscience for himself he takes the ordinary means to resolve his doubts. Just as a man consults his lawyer on a point of law and abides usually by his decision, so on a point of morals a penitent is justified in abiding by the advice of his confessor who is presumed to be an expert in matters of Christian morality. Of course exceptions may occur. The penitent may be a well-instructed Catholic and the confessor may be a poorly instructed priest, and it may be that the penitent sees good ground for distrusting the confessor's opinion on some point; in that case the penitent must follow his own conscience, for his own conscience is his guide in conduct, not that of his confessor.

2. May a confessor permit a penitent to follow an opinion which the penitent thinks probable, but which the confessor thinks is false?

Here we must distinguish. If the opinion in question is recognized as probable by theologians of note, and the penitent wishes to follow their opinion, he has a perfect right to do so, and the confessor has no authority to prevent him. The confessor is a judge of sins and of the dispositions of his penitent, not of theological opinions.[1] If, however, the opinion in question is not recognized as probable by theologians, but is only thought to be so by another confessor and the penitent; and the confessor whose absolution the penitent desires holds it as certain that the opinion is false, the confessor who thinks this can not allow the penitent to follow the opinion in question. For although the confessor is not a judge of theological opinions, yet he is a judge as to whether his penitent is being deceived or not by a false and dangerous delusion.

[1] St. Alphonsus, lib. vi, n. 604.

3. The case. Titius finds out from her confession that his penitent Cicily is in a proximate occasion of committing sins against the sixth commandment. Titius asks whether she can avoid the occasion, and she answers that another confessor told her that she was not bound to avoid it as it was necessary. After putting other questions Titius comes to the conclusion that that opinion is altogether false, as in his judgment Cicily can avoid the occasion with some but not great inconvenience. However, he does not know whether he can and should impose this obligation on his penitent. We answer that he should. By hearing Cicily's confession he accepts the responsibility of directing her, and in his opinion she is under the obligation of avoiding the proximate occasion of sin in which she is placed, and so he should tell her this. He will be justified in refusing absolution if she does not accept his ruling.[1]

[1] St. Alphonsus, lib. vi, n. 604.

7

AN ABUSE OF PROBABILISM

Titius sacerdos fideles suæ curæ commissos semper instruit et dirigit juxta sententias probabiles. Hinc prædicat eos non oportere esse sollicitos quoad intentionem ad Deum dirigendam, nam solide dicit esse probabile intentionem semel in vita habitam et non retractatam sufficere ad omnia opera totius vitæ informanda; nec quoad indulgentias lucrandas nam eamdem intentionem semel habitam et non retractam sufficere ad quascumque indulgentias lucrandas dummodo opera præscripta impleantur etiamsi indulgentia iis adnexa ignoretur. Unde quæritur:

1. Quomodo differant probabilismus, æquiprobabilismus, et probabiliorismus?

2. Num in omni materia sit usus probabilismi licitus?

3. Num intra limites materiæ licitæ præstet semper et cum omnibus probabilismo uti?

4. Quid de modo agendi Titii?

Solution

1. See approved authors.

2. See the answer to this question, p. 54.

3. Even when probabilism may be applied, is it well always to apply it for everybody?

No, it is not. There is room for prudence on the part of the confessor as to when a probable opinion is to be used.

The confessor indeed has no legislative authority and can not impose on his penitents an obligation which does not exist. But if the penitent is willing to do what is more generous and more perfect, the confessor should encourage him, and he would act very imprudently if by insisting on a probable and contrary opinion he caused the penitent to adopt a less perfect course of action than he had been prepared to follow. Occasionally when he knows his penitent and thinks that it will be for this benefit, the confessor may laudably urge him to act in a generous way, even though there is no obligation in the matter.

4. What about Titius' way of acting?

It may be hoped that the case is a fictitious one, and that no priest was ever so foolish and ignorant as to misapply probabilism in the way that Titius is said to have done. Probabilism is specially meant to settle doubts of conscience, and for use in the confessional. It is not intended to furnish matter for pastoral instruction and sermons. The preacher and instructor, without exaggerating obligations, should always propose a high ideal to his hearers and exhort them to follow it. As Rodriguez says: "By this discourse we easily see how important it is that in our spiritual exhortations we speak of that only which is perfect in a sovereign degree. If we preach, for example, on humility, it must be that humility which is most profound, and which reaches to contempt of oneself. If we preach on mortification, it must be on that which subjects all our passions to reason; if we preach on conforming our will to God, we must recommend a conformity which leaves us no will but that of the Almighty, which resigns our will entirely to His, and which establishes all its content and joy in the accomplishment of the divine will. . . . Because you are weak I

must propose to you the most perfect kind of virtue and devotion, that by your aiming at what is best you may be able to perform at least what is of strict obligation." [1]

Titius tells his people that they need not trouble themselves about directing their intention to God, for it is solidly probable that an intention elicited once for all will suffice to direct all the actions of one's life to God if it is not retracted. This is probably true, bearing in mind the clause "if it is not retracted." But it would most likely be understood to mean that there was no necessity for thinking about God oftener than once in a lifetime, which is, of course, altogether false. Besides it is only an opinion, and those who acted upon it might lose a great deal of merit if it is not the true opinion. Titius adopted the wrong tone in his instructions; he should not be content with the minimum, even if he tells his people what the minimum is, but he should exhort them frequently to renew their intention of pleasing God, so that they may be the more secure and may reap the greater reward.

Titius followed a probable opinion about the intention which is necessary for gaining indulgences, but here again it is only probable; it is not certain that it would suffice for gaining all indulgences as he says. So in this matter also Titius acted imprudently and from a wrong point of view, and he should correct what he said. For it is not certain that probabilism may be used in the matter of indulgences, inasmuch as indulgences are a grant made by the Church on certain conditions, and anyone who wishes to gain them must satisfy the conditions laid down.[2]

[1] Practice of Religious Perfection, vol. i, c. viii.
[2] Bulot, Compend. Theol. Mor., vol. ii, n. 1002.

8

A SCRUPULOUS PENITENT

Martha, pia femina, sibi proponit ut omnia deliberata peccata etiam venialia evitet. Bene per aliquod temporis spatium progreditur, postea tamen vel permissione divina fortasse propter aliquam vanam gloriolam, vel impulsu demonis nimia anxietate premitur. Deinde se peccare putat fere in qualibet actione, detegit enim in modo ambulandi vel circumspiciendi aliquam inordinationem, in vestitu aliis scandalum, in comestione aliquam gulam, in cogitationibus aliquid pravum, sive contra caritatem sive contra castitatem. Imo dum pugnat contra scrupulos aliquando facit quod credit esse mortale. Fere in desperationem cadit, timet enim ne propter infidelitatem suam Deus se dereliquerit. Quum confessarius videat scrupulos multum penitenti nocere, nunquam permittit ut plura quam duo peccata confiteatur, quamvis credat penitentem propterea mortalia aliquando omittere, et quamvis penitens dicat se in dubio versari an non peccet reliqua omittendo ac proinde esse necessarium ut etiam alia confiteatur, quia in dubio non liceat agere contra legem. Unde quæritur:

1. Quæ sint signa scrupulositatis?
2. Quomodo in genere sint scrupulosi a confessario tractandi?
3. Quid ad casum?

Solution

1. What are the signs of scrupulosity?

The confessor should know how to distinguish a really scrupulous person from one who only says that he is scrupulous or wishes to appear so. With this end in view theologians give certain signs by which scrupulosity may be known. The definition of a scruple will help us. A scruple is an idle fear and consequent anxiety that there is sin where it does not exist. The first sign, then, of scrupulosity is a tendency to idle fears and irrational dread of committing sin by a harmless action. Such idle fears and dreads are well known to physicians, and they seem only to differ from mental delusions in that a scrupulous person knows the folly he is guilty of, while one who suffers from delusions does not. Another sign of scrupulosity is that sin becomes a bugbear and is seen everywhere. The scrupulous person is fickle and inconstant in his judgment and consequent action; in fact he loses his power of forming a sane judgment on the point on which he is scrupulous. In spite of this he finds it difficult to surrender himself to the guidance of another, and is obstinately self-willed. He seems bent on torturing himself, and for this purpose apparently he fixes upon trivial points in the case which only a perverse ingenuity could suppose to be of importance.

2. How, in general, are scrupulous people to be treated by the confessor?

The confessor should first of all make sure that the case is one of scruples, and this he will be able to do by attending to the signs of scrupulosity. Then, as the cure of scruples takes time, it will be well for him to ask the penitent whether he is prepared to follow his advice and to come to him regu-

larly for confession. If he agrees, the confessor should give him some general rules of conduct, such as, never to be idle, not to read rigoristic books or frequent the society of the scrupulous, to take care of his bodily health, to mortify his pride and cultivate a spirit of humble submission to God's will. Then he will note in what precisely the penitent is scrupulous and teach him how to act against his scruples and gradually overcome them by forming contrary habits.

3. The case. Martha, a pious woman, made a resolution to avoid all deliberate sin, whether mortal or venial. As she was a pious woman we may suppose that she was not in the habit of falling into mortal sin. To aim at avoiding all deliberate venial sin is not indeed to aim at the impossible, but to attain it means a high degree of perfection which is not reached without great graces from God and long and faithful endeavor. It would have been better for Martha to take one step at a time and try to conquer her faults one by one. There was probably too much self-reliance, some spirit of pride, in her otherwise good resolve, and her indiscreet fervor caused her to fall a victim to scrupulosity, of which she exhibits one of the ordinary signs. She tries to fight against her scruples, and in doing this she sometimes does what she thinks is a mortal sin. We must suppose that her scrupulous conscience makes her think that she commits mortal sin against her own better judgment and the advice of her confessor. She should despise these apprehensions and boldly follow her confessor's advice. Her case is desperate. The confessor should tell her to act freely, that it is foolish to fear sin as she does, and that sin can not be committed without freely consenting to something which is known to be bad. He is right in not allowing her to confess all that she wants to confess, and he may limit her to

two sins or even to less, if he thinks it will benefit her. He may do this even though he knows that occasionally her confessions will not be integral, for scrupulosity sometimes excuses the penitent from integrity of confession. Even though Martha says that she doubts whether she is not committing mortal sin by not making an integral confession, the confessor must be firm, and tell her that she is safe in following the advice of her confessor. By degrees if she persists in not confessing and not thinking of her scruples and in acting against them, with the help of God she will recover her sanity.[1]

[1] St. Alphonsus, lib. i, n. 13.

LAWS

1

THE PROMULGATION OF LAW

Titius missionarius Rector in Anglia dubitat utrum ipse suspensionem quæ in Conc. West. IV, d. XI, n. 9, lata est contra ecclesiasticos sacris ordinibus initiatos qui "scenicis spectaculis in publicis theatris vel in locis theatri publici usui ad tempus inservientibus intersint" incurreret si interesset spectaculis quæ dari aliquando consueverant in scholis elementaribus suæ missionis a confraternitate quadam utriusque sexus juvenum. Rogat igitur suum Episcopum ut dubium solvat qui rem defert ad conventum omnium Episcoporum qui paulo post ad negotia gerenda habebatur. Hi decidunt omnia spectacula alia ac a pueris vel puellis exhibita etiam in scholis elementaribus esse lege provinciali comprehensa: quam decisionem Episcopus diœcesanus Titio communicat ac postea pluribus aliis sacerdotibus suis quando occasio oritur. Qua decisione non obstante gravia dubia de quæstione proposita adhuc Titium agitant. Unde quærit:

1. Cujus est legem interpretari?
2. Qualis promulgatio requiratur ut lex obliget?
3. Quinam subjiciantur legibus in Concilio provinciali latis?
4. Quid ad casum?

Solution

1. To whom does it belong to interpret an ecclesiastical law?

Law is interpreted authentically by the legislator, and such interpretation has the force of law if it be duly promulgated. It is interpreted doctrinally by theologians and canonists, whose authority *tantum valet quantum probat*. It receives a customary interpretation from the way in which it is observed, for *consuetudo est optima legis interpres*, and from the *stylus curiæ*, or the way in which it is applied in the ecclesiastical courts.

2. What sort of promulgation is required that a law may bind?

All are agreed that due promulgation is required in order that a law may have binding force. Promulgation is not a mere diffusion of knowledge concerning the existence of a law procured through the public press or by similar means. It is a publication of the law made by lawful authority, with a view to imposing an obligation on subjects to act as the law prescribes. It is left to the legislative authority to decide how a law is to be promulgated. Sometimes a special mode of promulgation is laid down in the law itself. Thus the decree *Ne temere*, Aug. 2, 1907, was promulgated by the very fact of its being transmitted to the Ordinaries. By the apostolic constitution *Promulgandi* of Sept. 29, 1908, Pius X decreed that "henceforward the Pontifical constitutions, laws, decrees, and other ordinances of the Roman Pontiffs, of the Sacred Congregations, and of the Offices, inserted and published in the said Bulletin (*Acta Apostolicæ Sedis*) with the authorization of the secretary or of the highest Official of the respective Congregation or

Office from which they emanate, in this, and only in this manner be considered as legally promulgated, whenever promulgation is necessary and the Holy See has not otherwise provided."

Episcopal laws are generally promulgated by being read in synod or in the churches of the diocese.

3. Who are subject to laws made by a Provincial Council?

Laws made in a Provincial Synod after recognition by the S. Congregation of the Council and promulgation by the Metropolitan bind all members of the Church who have a domicil or quasi-domicil within the territory represented by the synod, and who are not exempted. Even the bishops are subject to provincial laws, although they can dispense in them in particular cases. The interpretation of provincial law made by bishops either singly or gathered together in bishops' meetings, is not authentic, but rather doctrinal, although of course a bishop can if he pleases make a law for his own diocese.[1]

4. The case. Titius, a missionary rector in England, doubted whether he would incur the suspension inflicted by provincial law *ipso facto* on ecclesiastics in Sacred Orders who are present at stage plays in public theaters or in places serving for the time as public theaters, if he were to be present at a play given by a confraternity of young people of both sexes in the elementary schools of his mission. He referred the doubt to the bishop, who brought it before the other bishops at their meeting. The bishops decided that all plays given by others than mere children even in schools are comprehended in the law. The decision was communicated to Titius by his bishop, who on occasion communi-

[1] Laurentius, Institutiones Jur. Eccles., n. 228.

cated it to others as well. Notwithstanding this Titius still has grave doubts on the point.

It will be clear from what we said above that the decision of the bishops has not of itself the force of law. The main question is: Does the case come under the provincial law according to its natural signification? The chief difficulty is: Are elementary schools places serving for the time being as a public theater when a play is given in them? If private theatricals were held in a school for a few friends of the confraternity, it clearly would not be used as a public theater. But if the play is not private but public, in the sense that any one who chooses to present himself is admitted, then it would seem that the very fact of a play given there makes it a place serving the purpose of a public theater for the time. It is immaterial whether payment be required or not. So that it would seem that the decision given by the bishops was a declaration of the law according to its natural and obvious sense. Of course the sense of a positive law like the one with which we are concerned may be limited or extended by custom. This law is limited by custom in England to the extent that plays given by children do not come under it. In some dioceses it is said that custom goes further and excludes from the meaning of the law plays given by amateurs in schools and other such places. Whether in any particular diocese there exists such a custom against the law, and whether it is legitimate or not, are questions of fact to be settled by the evidence.

2

THE SUBJECT OF LAW

Lucius Anglus propter cœli amœnitatem partes meridionales petere a medico jussus, ire Romam ibique hiemem transigere apud se statuit. Vir conscientiæ timoratæ prius rogat confessarium suum consuetum ut quædam dubia de ratione vitæ Romæ statuenda solvat. Dubitat enim utrum sit futurum ut cum Romanis teneatur a carnibus abstinere non tantum Feria VI sed etiam sabbato; utrum possit cum eis carnibus vesci Feria IV tempore Adventus; utrum nonobstante decreto quodam Cardinalis Urbis Vicarii sibi liceat templa protestantica ibidem invisere etiam quando officia, seu *servitia* ut vocantur, celebrentur; utrum teneatur ad omnia festa de præcepto celebranda quorum plura non sint in Anglia obligatoria; utrum denique eadem responsio sit danda etiamsi per sex vel septem menses ibidem commoretur? Confessarius respondit regulam servandam esse simplicissimam: Cum fueris Romæ, Romano vivito more, eumque dimittit. Unde quæritur:

1. Quis dicatur *incola, peregrinus, vagus?*
2. Quibus legibus obligentur peregrini?
3. Quid ad casum?

Solution

1. Define the terms *incola, peregrinus, vagus.*

A person is called an *incola* of the place where he has his domicil. A domicil is acquired in a place by actually

taking up one's abode there with the intention of living there perpetually. By ecclesiastical law a quasi-domicil renders a person subject to most ecclesiastical laws like a true domicil. This quasi-domicil is acquired by living in a place with the intention of remaining there for the greater part of a year.

A *peregrinus* is one who for a short time, less than six months, takes up his abode in a place other than that in which he has his domicil or quasi-domicil.

A *vagus* is one who has no fixed abode, neither domicil nor quasi-domicil, anywhere.

2. To what laws are *peregrini* subject?

Peregrini, or strangers, are subject to the common ecclesiastical law which is observed in the place where they stay. They are also subject in the matter of contracts to the law of the place where they conclude them, and if they commit crimes they can be punished according to the law of the place where they commit them. Unless required for the avoidance of scandal, a stranger is not bound by the special laws of the place where he is staying, probably not even if there is a similar special law in his own country; for laws only bind subjects, and a stranger is not a subject. Neither is a stranger bound by the special laws of his own country while he is out of their jurisdiction, for a law is restricted to the territory of the legislator.

3. The case. Lucius, an Englishman, determines for reasons of health to pass the winter in Rome. As he is a man of delicate conscience he asks his confessor, before starting, to settle certain doubts as to what he may or should do while staying in Rome. First of all he wants to know whether he will be obliged to abstain from flesh-meat not only on Fridays but on Saturdays as well, as they do

in Rome. Inasmuch as Saturday abstinence is part of the common law, though in England and in many other countries a dispensation has been granted, and a stranger is bound by the common law wherever it is observed, Lucius should abstain on Saturdays while he is in Rome, if his health permits him. He may, however, eat meat on the Wednesdays in Advent, for the fast and abstinence observed on those days in England is not part of the common law. By an Instruction of the Cardinal-Vicar of Rome, July 12, 1878, approved by Leo XIII, all were strictly prohibited from visiting Protestant places of worship in Rome during service, and Lucius wishes to know whether he is bound by this law. If this were a merely positive precept, Lucius would not be bound by it, but in the circumstances which exist in Rome it is a precept whose observance is required by the necessity of avoiding scandal and of showing no approbation of heresy. Lucius would therefore be bound by it. With regard to days of obligation he is bound to observe all those which belong to the common law, though they may be suppressed and observed only as days of devotion in England. He is not bound to observe those which are merely local. If he had the intention of staying in Rome for six or seven months, he would become subject to the local law, and would therefore be under the obligation of keeping the local days of obligation. From what has been said it is clear that there are exceptions to the generally wise rule: "When you are in Rome, do as Rome does."

3

NOT EXCUSED FROM OBSERVING THE LAW

Titius confessarius dubius hæret utrum aliqui ebriosi qui pertineant ad suam missionem peccent necne omittendo Missam die dominico. Circumstantiæ autem casus sunt hujusmodi. Singulis Sabbatis isti homines post meridiem accipiunt stipendia pro labore hebdomadario. Pecunia accepta, pergunt statim ad tabernam, et bibunt usque ad ebrietatem. Redeunt domum hora fere undecima noctis, quando taberna clauditur, et proxima die effectus ebrietatis in lectulo patiuntur. Dubitat Titius utrum sint rei non tantum ebrietatis, sed etiam Missæ omissæ die dominica, nam ebrii sunt antequam lex urgere incipit, et quando urget sunt incapaces legis implendæ. Unde quæritur:

1. Quænam sint causæ eximentes et quæ causæ excusantes a lege?
2. Num liceat voluntarie ponere utrasque?
3. Num teneatur quis removere causam excusantem si possit ut legem impleat?
4. Quid ad casum?

Solution

1. What are *causæ eximentes* and *causæ excusantes a lege?*

Causæ eximentes remove a subject from the jurisdiction, as does departure from the territory within which the law

binds. *Causæ excusantes* relieve him of the obligation of obeying the law though he remains subject to it.[1]

2. Is it lawful to put both *causæ eximentes* and *causæ excusantes* voluntarily?

A subject may put *causæ eximentes* voluntarily, for a law does not compel a man to remain subject to it; it only obliges him to act in conformity with it as long as he remains subject. By special law, however, one who has incurred a reserved case in one diocese can not be absolved from it if he go to another diocese with the intention of getting absolution there.

While remaining under the jurisdiction of the law, a subject may not do anything with the intention of avoiding the obligation of complying with it. But for a sufficiently grave reason he may do something, although he foresees that the doing of it will make it impossible for him to comply with a positive law.

3. Is one bound to remove a *causa excusans* if he can, so as to be able to comply with a law?

Much depends on the nature of the law in question, for some laws bind more strictly than do others. Thus Lehmkuhl says: "Neque censent aliquem vi legis audiendi sacri teneri ut procuret solutionem a censura, liberationem a carcere, etc., si incarceratus Missæ assistere nequit, nisi forte *diu* vel ex industria ne sacro intersit hæc negligat. Attamen teneri aliquem vincula illa seu impedimenta removere ratione præcepti Communionis Paschalis; cui præcepto etiam aliquot diebus antequam tempus legis urgeat, non liceat impedimentum ponere, nisi satis gravis causa adfuerit." [2]

4. The case. Titius, a confessor, doubts whether some

[1] Bucceroni, vol. i, n. 216. [2] Theol. Mor., vol. i, n. 158.

drunkards in his parish commit sin by omitting Mass on Sundays. Every week these men get their week's wage after mid-day on Saturday. They go straight to the public-house and get drunk, returning home about 11 P.M. when the public-house closes. Next day they sleep off the effects of drink in bed. Although they certainly sin against temperance, Titius doubts whether they commit sin by not hearing Mass, for they are drunk before the time when the law of hearing Mass begins to be urgent, and when Sunday comes they are too ill to get up. If there were question of putting some honest excusing cause, the doubt of Titius would be well founded. Thus Gury says: "Iter quo impediatur Sacri auditio liceret ingredi e mera voluptate toto die Sabbati usque ad unam alteramve horam ante diem dominicam." [1] This, however, can not be applied to our case. For in this matter much depends on the intention of the legislator. He does not intend to restrict the liberty of his subjects so far as to compel them to forego honest recreation on Saturday, though this will prevent them hearing Mass on Sunday. But the legislator does not use the same indulgence in favor of drunkards, who get drunk on Saturday afternoon, foreseeing that they will not be in a fit state to hear Mass on Sunday. They sin, then, not only against temperance, but also against the obligation of Sunday Mass.

[1] Gury apud Génicot, vol. i, n. 116.

4

NON-CATHOLICS AND THE LAW OF THE CHURCH

Julia matrona Catholica rogavit confessarium utrum liceat carnes præbere Protestanticis diebus abstinentiæ. Aliquando enim, ut ait, hospites Protestanticos habet vel consanguineos vel amicos, qui per aliquot dies secum domi manent, et si dies abstinentiæ occurrat consuevit relinquere carnes in tabula laterali ita ut si velint eas sumere possint; quæ ratio agendi, ut patet, sua habet incommoda, ac proinde, si sit licitum, eos civiliter ad carnes diebus abstinentiæ comedendas invitare vellet. Unde quæritur:

1. Quinam sint legi subjecti?
2. Num hæretici et schismatici legibus ecclesiasticis subjiciantur?
3. Num liceat cooperari in peccato sive formali sive materiali alterius?
4. Quid ad casum?

Solution

1. Who are subject to a law so as to be bound to obey it?

All those and only those are bound to obey a law who are subject to the authority of the lawgiver. It is he who imposes the obligation, and he can only bind those who are subject to his authority.[1]

2. Are heretics and schismatics subject to ecclesiastical laws?

[1] Bucceroni, vol. I, n. 192.

The Church certainly has power to bind all those who are validly baptized, for by baptism they become subject to her authority. They will in general be excused from formal transgression on account of ignorance when they violate ecclesiastical law which they do not recognize. Moreover, many approved authors hold that it is not the intention of the Church to bind heretics and schismatics by such laws as are designed directly to procure the spiritual good of souls, such as laws imposing fasting, abstinence, and the observance of holy-days. It is the intention of the Church to bind them by the diriment impediments of marriage unless in a particular case she exempts them, as she does with regard to clandestinity.[1]

3. Is it lawful to co-operate either in the formal or in the material sin of another?

There can not be formal co-operation in another's sin without willing that sin, and, as this is sinful, formal co-operation in the sin of another, whether formal sin or material, is never lawful. Material co-operation in an act of another which is not necessarily sinful in itself, though as put by the other party it is sinful, is allowed, provided that there be good and proportionate reasons for it, and provided that the sin of the other party is not intended, and provided also that the co-operator is not bound by a special obligation to prevent the act.

4. The case. Julia, a Catholic, has been accustomed to leave flesh-meat on a side-table on days of abstinence when she has non-Catholic guests, so that they might help themselves to meat if they chose to do so. In this way she got over the difficulty she felt about inviting them expressly to eat flesh-meat on days when the Church for-

[1] Cavagnis, Instit. Jur. Can., vol. i, n. 566.

bids flesh-meat. However, the method had its drawbacks, and so she asked her confessor whether she might expressly invite them to take flesh-meat. From what has been said above it is plain that she may, for in all probability the Church does not intend to bind non-Catholics by such laws. A faculty is sometimes granted to bishops to enable them to allow their subjects to offer meat to non-Catholic guests on days of abstinence, but, as Putzer remarks, such a faculty is not strictly necessary.[1]

[1] Putzer, Comment. in Facult. Apost., p. 312.

5

NON-ACCEPTANCE OF A LAW

Lex quædam ecclesiastica rite promulgata Romæ fuit et ejus notitia per ephemerides per mundum catholicum sparsa. Episcopi tamen cujusdam regionis eam in suis diœcesibus non promulgabant, nec executionem urgebant, nec communiter fuit observata, imo contra aliqua ejus præscripta bona vel mala fide agebatur. Titius optimæ indolis juvenis qui studia theologica excolit anxietates et difficultates inde concipit quia doctrina a theologis de legibus tradita cum praxi congruere non videtur. Hinc ad confessarium recurrit et petit solutionem suarum difficultatum. Unde quæritur:

1. Num et qualis promulgatio requiratur ut lex nova subditos obliget?
2. Num acceptatio populi requiratur ut lex obliget?
3. Num nova lex contrarias consuetudines abroget?
4. Quid ad casum?

Solution

1. For the answer to this question, see p. 74.

2. Must a law be accepted by the people in order to be binding?

The question concerns ecclesiastical law and the answer must be in the negative, for the obligation of a law comes from the will of the lawgiver, not from the subjects. In spite of this, however, the fact that a law is not put into

execution and is not observed may *per accidens* take away or suspend its binding force. This may happen in various ways. The bishops, whose duty it is to see to the observance of ecclesiastical laws, may know of serious difficulties which stand in the way of the observance of some particular law, and they may have reported in this sense to the Holy See. If in such cases the Holy See insists on the observance of the law, the bishops should enforce it; but if the Holy See says nothing, the law may be considered as suspended for the present. Or it may be that on account of the difficulties in the way the observance of the law was not insisted on; in such a case the law will not bind practically, with the tacit consent of the legislator, or, after a certain time, on account of the prevalence of a contrary custom.

3. Does a new law abolish contrary customs?

A new ecclesiastical law abolishes general customs to the contrary, but it does not abolish particular customs, unless the law contains a clause specially revoking them.[1]

4. The case. Titius, a theological student, is distressed because he thinks that practice does not agree with the theory put down in the books about the binding force of a law. There a law is said to bind independently of its being received or not by the people. However, he notices that a certain law was duly promulgated in Rome, and it became known by being published in the papers. And yet the bishops in a certain country did not publish it in their dioceses, nor urge compliance with it, nor was it commonly observed; on the contrary some of its provisions were infringed. So Titius goes to his confessor and asks him for an explanation. The confessor will doubtless tell Titius

[1] C. 1, de Constit., in 6; St. Alphonsus, lib. i, n. 109.

that either the law in question was never meant for the dioceses which he has in view, or that the bishops have referred the matter to Rome, or that the difficulties in the way of observance are so great that the bishops think it best to say nothing about the law for the present. In any case Titius need not distress himself about the matter, which chiefly concerns the bishops; let him be ready to observe the law if and when it is enforced, and he may in the meantime do as others do, for we are here considering a merely positive law and its binding force.

6

PAYMENT OF TAXES

Caius mercator catholicus scrupulis angitur de obligatione tributa solvendi. Confessario narrat se declarasse officialibus tributis imponendis præpositis redditus suos annuos ascendere nonnisi ad quingentas libras sterlinas quum facile ad septingentas ascendant, ac proinde multo minus quam par sit se solvere; præterea se ex continenti in Angliam attulisse magnam quantitatem cigarorum quin quidquam tributi solveret eo quod in manu officialis portui præpositi secreto nummum aureum transiens posuerit, qui deinde sine molestia cum sarcinis se præterire permisisset. Unde quæritur:

1. Quomodo distinguantur tributa directa et indirecta?
2. Num gubernium habeat jus ad tributa imponenda?
3. Num gubernium anglicum tributa imponat ita ut ante acceptationem jus strictum ad ea habeat?
4. Quid ad casum?

Solution

1. How does direct differ from indirect taxation?

Direct taxes are levied on the possessors of property, land, income above a fixed sum, and on those who succeed to property on the death of a former owner; and they are payable by them on demand. Indirect taxes are levied on certain commodities such as spirits, beer, tobacco, tea, wine, and form part of the price paid for those commodities by the consumer. At present, in England, the burden of

taxation is divided almost equally between direct and indirect taxes.

2. Has the government the right to impose taxes?

Yes, certainly; a lawful government has the right to levy taxes, for money must be raised to carry on the government of the country, to provide for its defence, to pay for the cost of education, the civil service, and so forth.

3. Does the English Government so impose taxes that before they are paid it has a strict right to them in justice?

The government has a right to impose taxes, but in doing this it must of course follow the dictates of distributive justice, so that no class of persons in the community should be unduly burdened. It has the power of putting an obligation on the consciences of its subjects so that they will be compelled under pain of sin, if the government so intends, to pay the sums imposed by taxation. Subjects may even be obliged in justice to pay the taxes imposed, and thus they may be under the obligation of making restitution, if they have failed in their duty. But although the government has the authority to impose an obligation of this kind, it does not necessarily use all its authority. Other superiors, such as parents, do not always intend to impose a strict moral obligation under pain of sin on those subject to them whenever they signify a wish that they should do something. Neither need the State employ all its authority when it imposes taxes. It may be satisfied with imposing them under the obligation of a penal law, confident of its power to secure payment without regard to the consciences of its subjects. It is at least probable that all English positive laws, including taxation, are of the nature of penal laws.[1]

[1] Manual of Moral Theology, vol. i, p. 127.

4. The case. Caius, a Catholic merchant, is troubled in conscience because he declared to the income tax officials that his yearly income was £500, whereas it was at least £700, and he only paid income tax on £500. Caius told a lie to the officials, who are empowered by law to put such questions, and therefore have a right to the truth. But it does not follow that he is now bound to make up what he failed to pay on the additional £200, for, as we said above, English law does not give the government a strict right to the money derived from taxation till it is paid in. Nor can we say that if this view be accepted, Caius will escape part of the obligations which he owes to his country. For Caius necessarily pays what others of his position and style of living pay in the shape of indirect taxes, as well as income tax on the best part of his income, so that it can not be said that he does not pay for the benefits he derives from the institutions of his country. His action is not to be praised or imitated, but when we are asked whether he is bound to make restitution for the past, we must answer "No."

By generously tipping the custom-house officer at the port Caius brought from the continent a large quantity of cigars without paying duty for them. The custom-house officer sinned by taking the bribe and not doing his duty as he was bound to do by an express or at least tacit contract entered into when he accepted his office. Caius induced him to commit this sin, and therefore sinned himself by co-operating with the sin of another. Still, inasmuch as the money levied in taxes does not belong in justice to the government before it is paid in, neither Caius nor the custom-house official is bound to make restitution to the government for what it would have obtained if the officer had done his duty.

7

A SPANIARD WITH HIS BULLA CRUCIATÆ

Franciscus mercator Hispanus apud Liverpool commoratus ad varia sua negotia tractanda, ibi permanere debet per plures menses postea in Hispaniam reversurus. Interim confessionem facit sacerdoti diœcesano. Admittit se carnes necnon ova et lacticinia comedisse diebus abstinentiæ et jejunii, habet enim Bullam Cruciatæ, et est mere peregrinus. Insuper accusat se tum de peccatis reservatis Episcopo diœcesano tum de reservatis Summo Pontifici. Confessarius quum ignoret vim Bullæ Cruciatæ fidit pœnitenti se habere privilegium absolutionis obtinendæ asserenti ac eum absolvit. Quæritur:

1. Quid sit Bulla Cruciatæ, et quænam ejus privilegia?
2. An hæc sint personalia?
3. An vigeat Bulla Cruciatæ alibi ac in Hispania?
4. Quid ad casum?

Solution

1. What is the *Bulla Cruciatæ*, and what privileges does it confer?

The Bulla Cruciatæ, or Bull of the Crusade, was a papal Bull which originally granted indulgences in favor of those who took part in the wars against the Moors in Spain. Those who could not fight against the infidel could help in the good work by contributing money, and those who did this were admitted to a share in the privileges granted by

the Bull. The Bull continued to be granted after the crusades ceased, and the proceeds derived therefrom were devoted to the building of churches and other pious objects. Leo XIII granted a Bulla Cruciatæ to Alphonsus XIII, in the year 1902, to be in force for twelve years. Besides plenary and other indulgences, this Bull grants to the faithful laity who live in the Spanish dominions, or who come thither from elsewhere, the faculty of eating meat on fasting-days, but this faculty can only be used within the Spanish dominions. The faithful are also empowered once during life, and once again at the hour of death, to choose a confessor who receives authority to absolve them from all reserved sins and censures except manifest heresy. The Archbishop of Toledo, as Commissary-General, is granted certain faculties for dispensing from ecclesiastical law and granting compositions to debtors who owe money to creditors whom they can not discover.[1]

2. Are these privileges personal?

Yes, in general; but that which grants permission to eat meat on fasting-days can only be used within the Spanish dominions, and so this privilege is local as well as personal.

3. Is the Bulla Cruciatæ granted for other countries besides Spain?

Yes, it is granted to the old kingdom of Naples, or the kingdom of the Two Sicilies, as it is sometimes called, to Portugal, and to Spanish America, which formerly were subject to the rule of Spain.

4. The case. Francis, a Spanish merchant staying for some months at Liverpool, goes to confession to one of the priests of the diocese. He says that he has eaten meat,

[1] Acta S. S., vol. xxxv, p. 562.

eggs, and lacticinia on days of fasting and abstinence, for he has his Bulla Cruciatæ. In doing this he did wrong, for the Bull expressly limits the use of this dispensation to the Spanish dominions.

Francis also accuses himself of sins reserved both to the bishop of the diocese and to the Holy See.

As Francis is a *peregrinus*, it is probable that he does not incur cases reserved to the Bishop of Liverpool, but, putting that question aside, he can be absolved once by virtue of the Bull from all cases reserved to any Ordinary, or to the Holy See, except from manifest heresy. This faculty is not restricted to any particular place, so that Francis can be absolved by the Liverpool priest unless he has already made use of the faculty.

8

THE ROMAN CONGREGATIONS

JOANNES laicus Catholicus et in studiis Biblicis eruditus putabat argumentis criticorum actum esse de Mosaica authentia Pentateuchi. Post responsa a Commissione Biblica edita 27 Junii 1906, nil quidem publice scripsit ad suam sententiam defendendam quam tamen usque retinebat et amicis aperte significabat Commissionem Biblicam sua sententia errasse. Quod quum Joannis parochus et confessarius audiret, quomodo Joannes qui de ista materia in confessione altum silentium servaret esset tractandus quærebat. Unde

1. Quid sint SS. Congregationes Romanæ et qualem habeant potestatem?

2. Qualem vim habeant responsa et decreta dictarum Congregationum?

3. Quid ad casum?

SOLUTION

1. What are the Roman Congregations and what power have they?

The Roman Congregations are so many tribunals consisting of cardinals and officials designed to assist the Pope in the government of the Church, especially in the way of administration and discipline. Some few Congregations existed before the time of Sixtus V, but that Pope, by his constitution *Immensa*, Jan. 22, 1587, increased their num-

ber and defined the limits of their authority. In course of time, some new Congregations were added to those of Sixtus V, and difficulties arose as to their competence. Hence Pius X, by his constitution *Sapienti Consilio*, June 29, 1908, organized them afresh. According to this constitution there are thirteen Congregations, each of which has its appointed sphere of action. The Congregations are forbidden to transact any serious or unusual business without consulting the Pope, and their decrees require the Pope's approbation, except those for which he has granted special faculties.

2. What force have the answers and decrees of the said Congregations? We must distinguish between various classes of decrees and answers. (*a*) Sometimes documents issue from the Holy See which, in form, are decrees of one of the Congregations, but which are specially approved *in forma specifica*, by the Pope. In this way the decree S. C. C. *Ne temere* was issued Aug. 2, 1907. Such a decree is really a papal act and has the force of a pontifical law; the Pope uses the Congregation to issue a new law of his own. (*b*) Pius IX, in his letter to the Archbishop of Munich, Dec. 21, 1863, declared that all Catholics are obliged to submit to doctrinal decisions which emanate from the Roman Congregations. The obligation of submission, in this case, is not satisfied by saying and doing nothing contrary to such decrees. Ordinarily, at least, there must also be an internal submission under pain of falling into the sin of temerity and pride, in preferring one's own opinion to that of a competent authority which is empowered to decide such questions. But inasmuch as the Roman Congregations are not infallible, it may possibly happen that a particular decree of some Congregation is

false, and a learned man may see good reason for thinking that it is false. Such a one is not bound to assent to what, with good reason, he thinks is false; he should not openly attack the decree, but he may propose his reasons to the Congregation whose decree is in question, and await the result.[1] (*c*) Particular sentences and decisions given by the Roman Congregations, in particular cases, bind the parties in the case, as all admit. But opinion is divided as to whether such a decision binds others as well as the parties immediately concerned. Some hold that they do not, for want of due promulgation. Others hold that they do, inasmuch as they are merely authentic applications of the law.[2]

3. The case. John, a Catholic layman, and learned in Biblical studies, thought that the arguments of the critics against the Mosaic authorship of the Pentateuch were decisive. The Biblical Commission, June 27, 1906, decided that they were not decisive. Although John did not publicly write against this decree, he nevertheless adhered to his opinion, and openly told friends that he thought the Commission had made a mistake. When his parish priest and confessor heard this, he was puzzled how to treat John, who said nothing about the matter in confession.

The confessor doubtless will remember that by the *Motu Proprio* of Pius X, *Præstantia Scripturæ Sacræ*, Nov. 18, 1907, the obligation to obey the decrees of the Biblical Commission is the same as the obligation to obey the doctrinal decrees of the Roman Congregations. The words of the Pope are: "Quapropter declarandum illud præcipiendumque videmus quemadmodum declaramus in præsens expresseque præcipimus universos omnes conscientiæ

[1] Lehmkuhl, vol. i, n. 304. [2] Génicot, vol. i, n. 135.

obstringi officio sententiis Pontificalis Consilii de re Biblica sive quæ adhuc sunt emissæ sive quæ posthac edentur perinde ac decretis Sacrarum Congregationum pertinentibus ad doctrinam probatisque a pontifice se subjiciendi; nec posse notam tum detrectatæ obedientiæ tum temeritatis evitare aut culpa propterea vacare gravi quotquot verbis scriptisve sententias has tales impugnent; idque præter scandalum quo offendant ceteraque quibus in causa esse coram Deo possint aliis ut plurimum temere in his errateque pronunciatis." John does not, indeed, impugn the decree of the Biblical Commission, but he openly says that in his opinion it is a mistake. Therefore he does not submit to it, and he can hardly be excused from a grave sin of disobedience, temerity, and scandal, especially as his friends doubtless look up to him as an authority on Biblical subjects. Yet John says nothing about this in the confessional. His confessor, who is also his parish priest, can not allow him to go on receiving the sacraments of the Church while openly refusing to accept her authoritative teaching. The confessor, therefore, must broach the matter to him, kindly but firmly, and admonish him of his obligations. If he refuses to submit, he must deny him absolution.

9

A PASSIVE RESISTER

Titius, laicus Catholicus, ut monstret quousque tendant molimina eorum qui passive resistant vectigalium pro scholis solutioni et quia putat injusta onera Catholicis lege scholari imponi ipse vectigal scholare utpote contra conscientiam solvere recusabat. Paulus vero magistratus Catholicus coram se arreptum Titium sub poena carceris subeundi ad vectigal solvendum compulit. Philippus autem alius Catholicus scandalum inde passus aut illum aut hunc necessario deliquisse censebat. Unde quæritur:

1. Qualem obligationem inducant subditis leges civiles anglicæ?

2. Num legibus iniquis obtemperari possit aut debeat?

3. Num judici catholico juxta legem iniquam sententiam ferre liceat?

4. Quid ad casum?

Solution

1. See this question answered, p. 90; also see "Manual of Moral Theology," p. 127.

2. May one and ought one to obey unjust laws?

We may not obey a law which commands us to do something contrary to the law of God, for "we ought to obey God rather than men." If the law is unjust because it lays an unjust burden on a particular person or class, it will not be morally wrong, as a rule, to submit to it, for

we may, without sin, forego our strict right. Whether we ought to submit to it or not, will depend upon circumstances. If resistance would produce greater harm than good, as is often the case, there will be a duty of submission to prevent greater evil. If the contrary is true, we are not bound to submit.

3. May a Catholic judge pass sentence according to an unjust law?

Here we must distinguish. If the law prescribes the doing of something that is against the law of God, as idolatry, for example, a judge may not give sentence according to such a law. To command any one to commit idolatry is, and must be, always wrong. Sometimes civil laws are unjust because they are against the rights of the Church. In such cases, if the Church can forego her right, she sometimes does so. Thus, although the civil laws about judicial separation of Catholic married couples are a usurpation of ecclesiastical jurisdiction, yet the Church permits such cases to be tried in the civil courts in England with due precautions.[1]

If the law is unjust because it is against the rights of the subject, we must distinguish again. Some rights, as that to life, are inalienable; and a judge can not pass sentence according to a law which unjustly imposes the death penalty. If the law merely imposes a fine or imprisonment, such a penalty may be submitted to without sin, and if the judge can not escape the obligation of imposing the penalty without forfeiting his position, it is a probable opinion that he may impose it, and the subject should then submit to it for the common good, at any rate, when resistance would be useless, or would cause greater harm.[2]

[1] S. O., Jan. 23, 1886. [2] Bucceroni, vol. ii, n. 19.

4. The case. Titius, a Catholic, refused to pay the school rate in order to give an object-lesson to the passive resisters, and because he thought it unjust to Catholics. Titius can be excused from sin on the general principle that English law does not bind under pain of sin, and because of his good faith, and also because his assertion is well grounded that Catholics are unduly burdened, inasmuch as they do not get a fair share of the public money contributed to education. Nor does this doctrine excuse the passive resisters, whose case is quite different. For they combine together to resist the law without justification, seeing that they get more than their share of public money for education. Whether they are in good faith or not can be known only to God.

Titius was brought up before Paul, a Catholic magistrate, who sentenced him to go to prison or to pay the tax. Paul acted rightly in passing sentence according to law, as is clear from what was said above. Nor need Philip be scandalized, for neither Titius nor Paul need necessarily have committed any sin in acting as they did.

10

PUTTING OBSTACLES TO SUNDAY MASS

Carolus juvenis catholicus jungit se societati cyclistarum (*bicycle club*) et cum sociis post meridiem Sabbatis domo discedere locos distantes ac sive in historia sive aliter celebres visitaturus et post meridiem diebus dominicis domum revertere solet. Si ecclesia sit catholica in loco Carolus audit Missam, secus locum circumeundo tempus transigit. Quum vero instructionem de Missa audienda casu quodam audiret stimulis conscientiæ motus confessarium rogabat utrum licite necne egisset. Unde quæritur:

1. Quomodo differant causæ a lege excusantes et eximentes?
2. Num tales causas impletioni legis apponere liceat?
3. Quid ad casum?

Solution

1. See this question answered, p. 80.
2. This question is answered, p. 81.
3. The case. Charles, a young Catholic, joins a bicycle club and is accustomed to go with other members of the club on Saturday afternoons to distant places of resort. They stop at the place for the night and return home on Sunday afternoon. If there is a Catholic church in the place, Charles hears Mass on Sunday morning, otherwise he spends the time in sight-seeing. An instruction on hearing

Mass puts a scruple into his head about this matter, and so he asks his confessor whether he had acted lawfully.

Charles would have done wrong if he had chosen places of resort on account of there being no Church there where he could hear Mass. But this he did not do. The question for solution resolves itself into this: May a man for the sake of recreation put himself in circumstances in which he foresees that he will not be able to hear Mass on a day of obligation? Theologians answer that he may not do this on the day itself nor during the time when the law begins to impose an obligation to make ready to fulfil the law. It is difficult to determine the exact time when we are obliged to make preparations for, or not to put impediments in the way of hearing Mass of obligation. Some approved authors say that the obligation does not arise until a few hours before the day on which Mass is to be heard. Thus Génicot says: "Licet iter arripere etiam sine peculiari causa quamvis hoc prævideatur impedimento fore ne post aliquot dies præcepto Sacri audiendi satisfiat. Non licet iter ob meram recreationem aggredi quando jam instat hora Sacri audiendi. . . . Iter quo impediatur Sacri auditio liceret ingredi e mera voluptate toto die Sabbati usque ad unam alteramve horam ante diem dominicam."[1] According to this opinion Charles did not commit sin in what he did, but he should be warned not to do it too often, and to take care not to become negligent about hearing Mass on Sundays.

[1] Gury, vol. i, n. 111; Instit. Theol. Mor., vol. i, n. 116.

11

A STATUTE-BARRED DEBT

Quidam Titius venit ad confessionem et rogat utrum teneatur solvere debitum ante sex annos contractum ob inhabilitatem vero hucusque non solutum, nec a creditore interim propter ejus bonitatem petitum. Unde quæritur:

1. De quibusnam pendeant vis et obligatio legis?

2. Num possit lex civilis obligationem naturalem impedire vel etiam tollere?

3. Probetur quid efficiant leges quæ dicantur Statutes of Limitation.

4. Quid ad casum?

Solution

1. On what does the binding force of a law depend?

The binding force of a law depends partly on the matter of the law, but chiefly on the intention of the lawgiver. It depends partly on the matter, for a human lawgiver can not impose a grave obligation in matter which is altogether trivial. Such a thing would be against reason, and law is a reasonable ordinance. But the lawgiver is not bound to impose a serious obligation whenever the matter is serious. He may if he likes and if he thinks it will be for the common good impose a light obligation under pain of venial sin, or he may be satisfied with a penal obligation to submit to the penalty prescribed for violation of the law, and not bind under pain of even venial sin.[1]

[1] St. Alphonsus, lib. i, tr. 2, nn. 140–143.

2. Can civil or municipal law prevent a natural obligation arising or take it away?

The civil law can not impose an obligation which is contrary to the natural law, for there can be no obligation to do what is wrong. But civil law for the common good can lay down prescriptions and conditions to be observed in order that rights may be acquired, and thus it can prevent acts from having their natural effects through want of formalities required by law, and in certain cases it can even take away rights and consequent obligations. Thus the formalities required by law for the validity of a will prevent obligations arising from an informal will though they would arise if the law did not exist; and the law of prescription takes away rights from one person with their corresponding obligations and transfers them to another.

3. Show what effect the Statutes of Limitation have in English law.

The Statutes of Limitation fix a certain time within which an action must be enforced according to English law. There are many of them, and they fix various limits of time for different actions. For the purposes of this case it will be sufficient to mention the Real Property Limitation Act of 1833 and that of 1874, which prescribe a period of twelve years within which actions must be brought to recover land or rent other than land or rent belonging to spiritual and eleemosynary corporations sole, and land belonging to the Crown. On the expiration of the prescribed period of limitation not only is the remedy by action barred, but the title of the persons against whom the statute has run is extinguished.[1] From what was said above it is clear that this extinguishing of the right is not *ultra vires*, and that it is

[1] Encyclopedia of Laws, *s.v.* Limitations (Statutes of).

efficacious both in the external forum and in that of conscience.[1] The Limitation Act, 1623, as amended by subsequent statutes, prescribes a period of six years within which an action for debt grounded upon any lending or contract without specialty must be brought. The effect of this law can not be greater than was intended by the legislature and than the practice of the courts and expert opinion assign to it. Judged by these standards there can be no doubt as to what the effect of the law is. It merely bars the remedy; it does not extinguish the right.

Sir F. Pollock says: "Now there is nothing in these statutes to extinguish an obligation once created. The party who neglects to enforce his right by action can not insist upon so enforcing it after a certain time. But the right itself is not gone. . . . Although the creditor can not enforce payment by direct process of law, he is not the less entitled to use any other means of obtaining it which he might lawfully have used before." [2]

4. The case. It will be clear from what has been said that Titius is bound to pay the statute-barred debt. The obligation remains unless it has been taken away. No other way in which the obligation could have ceased is suggested in the case except the operation of the Statute of Limitation. This certainly does not take away the obligation.[3]

[1] Manual of Moral Theology, vol. i, p. 380.
[2] Principles of Contract, p. 599.
[3] Manual of Moral Theology, vol. i, p. 126.

12

INTERPRETATION OF A PRIVILEGE

Caius et Julius sacerdotes se recreandi causa ad diem integrum in locum distantem perrexerunt ac quum prævi-derent se non posse post reditum Breviarium recitare illud secum asportare intenderunt, uterque tamen aliis rebus occupatus illius est oblitus. Caius occasione arrepta Rosarium recitare incœpit dicendo ex commutatione ipsis concessa in pagella facultatum quando ob legitimum im-pedimentum Breviarium non posset recitari, Rosarium esse substituendum. Julius vero respondit se Rosarium non recitaturum, facultatem enim in pagella esse privilegium quo uti neminem teneri. Domum circa mediam noctem reversi Rectorem rogabant uter de obligatione Rosarii recitandi melius sensisset. Unde quæritur:

1. Quid sit privilegium, et quænam ejus variæ species?
2. Quomodo sit intelligendum illud: Nemo uti privilegio tenetur?
3. Quomodo intelligatur "Rosarium" in facultate de qua in casu?
4. Quid ad casum?

Solution

1. What is a privilege, and what different sorts are there?

A privilege is defined by canonists and theologians to be a private law conferring on the holder some special favor. It partakes of the nature of a law, inasmuch as it imposes on others the obligation of not violating the privilege. Privi-

leges are personal when they are granted immediately to a physical or moral person; that is, to an individual, or to a class, or to a corporation. Those which are granted immediately to a thing or a place are called real privileges. They are against the law (*contra jus*) when they derogate from it, as does the privilege of a private oratory. If there be no law from which it derogates, a privilege is said to be *præter jus*, such as the faculty of absolving from reserved cases.

2. How is the saying to be understood, "No one is bound to use a privilege"?

This rule follows from the nature of a privilege, for a privilege is a special favor. But if it imposed on the holder an obligation to use it, it might become a burden. However, the rule must be understood with some limitations; for it may be that if I do not use a privilege which I possess, harm may ensue which I could prevent by using the privilege. In such a case charity requires that I should use the privilege. And thus if a penitent comes to me with a reserved case, for which I have a special faculty, I am bound to give absolution. Individuals who belong to a privileged body are not at liberty to renounce the privileges of their order, so that a cleric can not lawfully give up the privilege of the ecclesiastical court.

3. How is "Rosary" to be understood in the faculty in question? Does it mean five decades or fifteen?

In some forms of the faculty this question can not arise, for it says expressly "quindecim decades Rosarii." But the meaning is the same even if the word "Rosarium" alone is used, according to a response of the Holy Office, July 2, 1884, ad 8.[1]

[1] Collectanea S. C. de P. F., n. 1622.

4. The case. Caius and Julius, priests, went off for the whole day on an excursion. They foresaw that they would not be able to say their Breviary on their return, so they intended to take it with them, but they both forgot it. Caius thought that in these circumstances he was bound to say his Rosary, for there was a faculty in the pagella "Recitandi Rosarium vel alias preces, si Brevarium secum deferre non poterunt, vel divinum officium ob aliquod legitimum impedimentum recitare non valeant." Julius, on the contrary, said that the faculty was a privilege, which no one is bound to use. On their return home they submitted their difference to their rector. The rector while admitting that in such circumstances it is a very good thing to say one's Rosary, yet will doubtless agree with Julius that there is no strict obligation to do so. For the Church imposes on priests the obligation of saying the Breviary, not the Rosary. And, as Julius said, the faculty in the pagella is a favor, a privilege, which does not in this case impose any special obligation of using it out of charity or other extrinsic reason.

SIN

1

THE ELEMENTS OF SIN

Thomas recenter missioni cuidam ab Episcopo præpositus ea est mentis indole ut omnia timeat, difficultates imo et peccatum ubique perspiciens. Quoties in sacro sedet tribunali ad audiendas confessiones inhonestis cogitationibus infestatur et motibus; quando theologiæ moralis studio incumbit idem illi semper contigit. Sæpius per diem propositum potius moriendi quam consentiendi repetit; redeunt tamen tentationes et tenacius hærent. Timet insuper quod aliquoties saltem in expellendis hujusmodi tentationibus licet firmam habuerit voluntatem negligenter ab initio restiterit. Tandem librum quemdam de profano amore tractantem recreationis causa perlegit, quamvis præviderit gravissimas tentationes, easque revera passus fuerit, dubius tamen hæsit an consenserit necne. Unde quæritur:

1. Quid sit delectatio morosa, quid gaudium, quid desiderium?

2. Quibus gradibus ad delectationem peccaminosam perveniatur et quomodo committatur peccatum?

3. Quomodo dignoscatur species hujusmodi peccatorum?

4. An sicut et gaudii et desiderii, delectationis etiam morosæ objectum in confessione pandendum?

5. Quid de Thomæ casu censendum?

Solution

1. For the answer to this question see "Manual of Moral Theology," p. 149 ff.

2. By what degrees is sinful pleasure arrived at, and how is the sin committed?

The first stage on the road to sin is the apprehension of a sinful object by the intellect. We here suppose that this simple apprehension is not voluntary. The sinful object thus present in the mind naturally attracts the appetite and an indeliberate motion of the will toward the object is the consequence. Then the intellect notices what is going on and reflects that it would be wrong to consent to the inordinate motion. If consent be given after advertence to the wrongfulness of the object, sin is committed. So that there is no sin in the apprehension of a sinful object by the intellect, nor in the natural and indeliberate movement of the will toward that object which follows. Sin is committed by freely choosing something which is sinful, and this can not be done without previous advertence by the intellect to the sinfulness of the object.

3. How are the species of this sort of sin known and distinguished?

Sins are human acts, and acts are specifically distinguished by their object, so that the species of a sin is known by its object. The object in sinful desire is something wrong in the concrete, invested with certain circumstances without which the object can not exist in the concrete. Sinful desire, then, will contract the malice of the object, and that of any evil circumstances with which the object may be invested. The same is true of joy about a sin committed in the past. Morose delectation in a sinful act as repre-

sented in the mind can prescind from certain circumstances which would invest the object in the concrete, and if it does so prescind from them, they do not form part of the object of the sinful delectation, and so they do not affect its malice.

4. Has the object of morose delectation to be made known in confession as the object of evil joy and desire has?

Yes, *per se;* for otherwise the sin will not be confessed in its kind. Thus morose delectation in a thought of fornication is quite a different sin from morose delectation in a thought of revenge. Some theologians, however, admit an exception to this rule in the case of morose delectations of impurity. They point out that ordinarily in such sins it is not so much the object which attracts as the immodest pleasure which such thoughts ordinarily cause. This immodest pleasure gives unity to the sins of thought, even though their objects are different. This opinion relieves confessors of the irksome duty of asking for details about such sins in the confessional beyond the number and the kind in general. Detailed questions about the objects of such sins frequently could not be put without danger both to the penitent and to the confessor.[1]

5. The case. Thomas, a priest who has lately been put in charge of a mission, is of a timid disposition, and fears difficulties and sin everywhere. He is tempted by bad thoughts and feelings whenever he hears confessions, as he was when he studied moral theology. These temptations are not sins, for he does not consent to them. They probably come from his being afraid of them, and they will cease if he does not bother about them, and commits himself to God. Sometimes he is afraid that at least he was

[1] Génicot, vol. i, n. 175.

negligent in repelling them at once. We understand by repelling thoughts of this kind the turning away of the mind from them as far as possible. Thomas may have committed fault in this way, as it is difficult always to be prompt in rejecting such thoughts, but the negligence would not be more than a venial sin. In reading a novel for recreation, though he foresaw that serious temptations would be the result, he did not commit a sin unless he foresaw proximate danger of consenting to evil. This we must not presume in a man like Thomas. Afterward he doubts whether he gave consent to evil; as the presumption is in his favor he need not confess this. However, it will be better if Thomas will for the future seek his recreation where he is not likely to be troubled by thoughts and feelings which are always objectionable and dangerous.

2

CURIOSITY SINFUL

Titio qui studio theologiæ moralis incumbit videtur scientiam esse bonam ac propterea ejusdem desiderium non posse esse malum. Theologi tamen aliud docere videntur quum curiositatem esse peccaminosam tradant. Sic juxta eos lectio inhonesti libri, inquisitio a juvenibus de rebus sexualibus, aspectus inhonestus, sunt peccata saltem venialia si ex curiositate proveniant; veritatem autem a mortuis ex curiositate sciscitari est mortale. Ut solvere has difficultates possit Titius rogat:

1. Quid sit curiositas, et in quo consistat ejus malitia?
2. Num desiderium vel prosecutio objecti boni sit semper bonum?
3. Titio ejusque difficultatibus satisfit.

Solution

1. What is curiosity and in what does its malice consist?

Curiosity, in the sense in which the word is used by theologians, is an inordinate desire of knowledge. As St. Thomas teaches (II–II, q. 167, a. 1), knowledge is *per se* good, but it may be bad *per accidens*, as when it is the cause of pride. And although knowledge is good, yet the desire of knowledge may be inordinate and vicious. The desire of knowledge becomes vicious if the end for which it is sought is bad, as if one studies medicine in order to poison an enemy. Moreover, all knowledge is not equally important, and so a desire of knowing what is less useful is inordinate if it stands in the way of acquiring knowledge which is

necessary. A law student who requires all his time to qualify for his examinations would do wrong if he spent two hours daily in learning Chinese. If the means taken to acquire knowledge are bad, the desire becomes inordinate. Thus, as St. Thomas says, it is unlawful to seek to know the future from demons. Fourthly, a desire of knowledge is inordinate if it leads one to try to learn what surpasses his powers.

2. Is the desire or pursuit of a good object always good?

No; in order that an action may be good, not only the object, but the end and all the circumstances must be good — *Bonum ex integra causa, malum ex quocumque defectu.* The answer, too, is clear from what was said above.

3. The case. Titius, a theological student, thinks that as knowledge is good the desire of it can not be evil. This difficulty has been met already. It is clear that the desire of knowledge can be inordinate, and if it is inordinate, it is sinful. Theologians are right when they teach that curiosity is at least a venial sin and that it may be mortal. Thus the reading of an improper book out of curiosity, where there is not proximate danger of consenting to evil, is a venial sin; if the book is indecent and there is proximate danger of consenting to evil, it is mortal. Before the proper time youths should not think or talk about sexual matters, as thought and talk about such matters before the time leads to impurity. Hence to indulge curiosity about them in talk, look, or reading, is at least a venial sin, and it becomes mortal if the danger of consent be proximate. To seek to know occult matters by calling up the dead is specially forbidden in Holy Scripture, and is mortally sinful.[1]

[1] Manual of Moral Theology, vol. i, p. 218; Lessius, De Just., lib. iv, c. 4, n. 84.

3

A VOCATION LOST

Maria monialis in religione votorum simplicium professa tunc primum didicit delectationem veneream in conjugio esse licitam, quod si ante vota emissa scivisset nunquam vovisset. Sæpe desiderium nubendi si liceret concipit, ac tandem quum parentes senescentes et in paupertatem lapsi litteris voluntatem ejus præsentia et auxilio fruendi manifestent gaudet Maria occasionem esse oblatam petendi a votis dispensationem quam proinde a confessario petiit. Hic vero his manifestatis quærit:

1. Qualis error vota invalidet?
2. Num et quale sit peccatum desiderium rei malæ sub conditione "si liceret"?
3. Num de infortunio alterius gaudere liceat?
4. Quid a confessario fieri in casu possit vel debeat?

Solution

1. What sort of mistake makes vows invalid?

Substantial mistake about the substance of the vow makes it invalid just as such a mistake makes other contracts invalid, for a vow is a promise made to God. Private vows are also rendered invalid if they were taken under a mistake about some accidental circumstance of great importance which was a principal motive for taking the vows, and probably even by a mistake about some accidental circumstance of less moment, if the mistake was such that the vows would

not have been taken if the truth had been known. However, this probable opinion can not be applied to vows taken in an approved Religious Order, for such vows place the person who takes them in a fixed and permanent state of life, and only substantial mistake makes them invalid. Much in the same way marriage is a permanent state of life, and only substantial mistake can be admitted as a diriment impediment of marriage.[1]

2. Is a desire of evil under the condition *si liceret* a sin, and of what sort?

If the condition takes away the whole malice of the desire and it is not dangerous to entertain it, a conditional desire of evil is not sinful. Thus if on a Sunday I say, "I should like to stay at home to-day if the Church did not bid me go to Mass," I do not commit a sin. This doctrine holds in matters of mere positive law. In matters which belong to natural law, where a voluntary inclination toward a wrongful act is sinful and remains sinful even under the condition "If it were allowed," such conditional desires are wrong, and belong to the same species of sin as does the corresponding external act. Thus the conditional desire, "I should like to kill my enemy if it were lawful," is a sin of the same malice as homicide; it is the expression of a movement of hatred for one's neighbor which goes the length of desiring to take his life; the added condition "if it were lawful" does not annul this movement of hatred nor take away its malice.

3. Is it lawful to rejoice at the misfortune of another?

No; as it is uncharitable to wish evil to another, so it is uncharitable to rejoice at his misfortune. But it is not uncharitable to be glad that a misfortune has befallen my

[1] St. Alphonsus, lib. iii, n. 198.

neighbor because thereby greater good accrued to him or to the public. In this case the object of joy is the good, not the misfortune, of one's neighbor.

4. The case. Mary, a nun, learned after profession of simple vows that venereal pleasure is lawful in marriage, and if she had known it before she would not have become a nun. We must suppose that Mary knew what chastity is when she took her vow. Her ignorance with regard to marital rights was not substantial mistake about her vow, nor did it render the vow invalid.

She often forms a conditional desire of marrying if it were lawful. In this Mary does wrong, for although such a desire *per se* is not wrong, yet one in Mary's position can not foster such desires without exposing herself to temptations against her vow or against her vocation. How seriously Mary sinned in this would depend on the degree of danger to which she exposed herself.

Her parents become old and poor, and write to Mary that they desire her presence and help. If Mary can be of any real help to her parents, she has good reason for asking for a dispensation from her vows. If the necessity of her parents were extreme, she would be bound to go and help them; if it is grave, the question whether she is bound to go is disputed. At any rate if she can help them and relieve their necessity, she may ask for a dispensation from her vows, nor does she commit a sin in being glad of the opportunity. The confessor, however, can not grant her a dispensation; it will be his duty to consider her character and circumstances so as to be able to give her good advice. It might be that she would be useless to her parents, and would have no chance of marrying if she left her convent, in which case her confessor would advise her to stay in religion, and give

what help she could to her parents with the permission of her superiors. But it might also be that, all things considered, it would be better if Mary returned to the world, and in that case the confessor would advise her how to ask for a dispensation from her vows.

4

AN AMBITIOUS LAWYER

Titius laicus ingenii præstantis legi civili studebat et quum se alios facile superare sciret primos honores ac dignitates se acquisiturum sperabat unde magnum nomen posteris relinquere posset. Infortunio quodam in causa magni momenti cecidit, unde ambitione projecta et reputatione apud alios despecta, ebrietati indulgebat ac si non excusationem vitiorum saltem aliquam consolationem ex asceticorum dictis de mundi vanitate et de contemptu gloriæ inveniebat. Paulus Titii amicus scit quidem Titium errasse, ubi vero stet virtus practice et theoretice haud facile dictu experitur. Unde quæritur:

1. Quid sit superbia et in quo præcise ejus malitia consistat?
2. Quid sit ambitio et quale sit peccatum?
3. Quid sit vana gloria et quomodo a cura boni nominis distinguatur?
4. Num et quomodo in his peccaret Titius?

Solution

1. What is pride and in what precisely does its malice consist?

Pride is the inordinate love of one's own excellence. To acknowledge and to love in due measure the good qualities of soul or body or the gifts of fortune which one possesses is not pride; if such blessings are referred to their proper

source, they become the grounds of a proper and becoming self-respect. Truth requires that we should esteem ourselves at our real value, and that we should attribute any good that we have to its true source, our Creator and Lord. If we leave God out of account and claim practical independence of Him, and magnify ourselves for the gifts which we possess or which we think that we possess, we become proud. Similarly inordinateness and pride make their appearance when we attribute the good that we have to our own merits, or when we affect to have more than in reality we have, or when we conduct ourselves as if we were the only persons who had such good things, and consequently look down with contempt on others. The malice of pride consists in so extolling oneself as to claim practical independence of Almighty God. The proud man does not like to acknowledge his indebtedness to God for all that he has; he does not like to submit to the ordinances of God or to those of legitimate superiors; he strives to shake off as far as possible the yoke of subjection which is the necessary condition of man inasmuch as he is a creature.

2. What is ambition and what sort of sin is it?

Ambition is an inordinate desire of dignities and honors. A moderate desire of dignities and honors for a good object is not vicious, but if the desire becomes immoderate, or the end in view is not good, or unlawful means are employed to attain honors, vicious ambition makes its appearance. It is a venial sin *per se*, but it may be mortal on account of the means employed, or the end, or on account of injury done to one's neighbor.

3. What is vainglory and how is it distinguished from the care of a good reputation?

Glory is knowledge by others accompanied by their praise.

It is natural and praiseworthy to seek by good deeds to deserve the esteem and praise of the good. This is what is meant by a good reputation, and we are obliged to strive to acquire it and to preserve it when acquired, as the necessary condition for doing good in the world. The desire of being praised by others becomes the sin of vainglory when praise is sought for what does not deserve praise, or without due moderation, or for an improper object, or from those whose opinion is of no value.

4. Did Titius commit sin in the case, and if so, what sin?

Titius was a clever young man who studied law. He knew that he surpassed others in ability and aspired to the greatest honors and dignities, and thus he hoped to enjoy a great reputation with posterity. There is nothing that is necessarily vicious so far. He failed in a case of great importance, and disappointment caused him to give up his schemes for the future, to care nothing about his reputation, and to take to drink. He found some consolation if not excuse for his conduct in the sayings of ascetics about the vanity of the world and contempt for human glory. Here, of course, Titius did wrong in taking to drink, and he misapplied the sayings of ascetics. Ascetics warn us truly of the vanity of the world, and they teach us not to indulge in vainglory, but they do not tell us that we may throw away a good reputation. On the contrary, a good reputation is useful not only to others, but to the possessor of it as well, especially while his virtue is immature. Few can afford to rest on God alone; the many, who are good but imperfect, need the spur of others' praise and the fear of their censure in order to persevere in the difficult paths of virtue.

5

SEXUAL CURIOSITY

Caius juvenis innocentissimus sexdecim annorum qui in collegio quodam catholico educatur quodam die in auctore pagano cui studet incidit in locum expunctum, unde curiositate ductus quærit aliud exemplar ejusdem libri, in quo invenit locum integrum quem legit et invenit describi fornicationem a deo quodam pagano patratam cum muliere; quia lectione turbatus et allectus de re cogitat apud se et incipit suspicari quomodo homines originem ducant, quod antea omnino ignorabat. Juvenis porro maxime ingenuus a magistro petit ut certitudinem de re habeat. Consentit magister tanta innocentia attonitus ac suspicans alios in classe ejusdem fere ætatis fortasse in eodem statu versari explicat publice omnibus physiologiam generationis humanæ. Quæritur:

1. Quid sit mala cogitatio, et quid requiratur ut per eam quis mortaliter peccet?

2. Num cogitatio de re mala sit peccaminosa, et numquid specialiter sit notandum de cogitatione de materia luxuriæ?

3. Quid de modo agendi Caii ejusque magistri?

Solution

1. What is a bad thought and what is requisite for a mortal sin of thought?

A bad thought is either a desire to do something bad, or

morose delectation in something evil as represented in the mind. All bad thoughts can be reduced to those two classes. Under bad desires are placed all internal sins which tend toward the doing of some evil. Under morose delectation come all internal sins which are consummated in the mind, and which do not tend to the accomplishment of some evil outside the mind. For a mortal sin of thought the object must be gravely sinful, and there must be clear advertence to the grave malice and full consent to it.

2. Is the thought of an evil object sinful, and is there anything to be specially noted concerning thinking about sins of impurity?

The thought of an evil object is not necessarily sinful. If, for example, I think about a brutal murder which has been committed, I do not thereby commit sin. I should commit sin if I thought of it with pleasure and approbation, gloating over the hideous details, or rejoicing in the murder because the murdered man was an enemy of my own. Although it is not sinful to think of an evil object *per se*, yet sometimes there is danger in such a thought, because it tends to excite a sinful appetite. Thoughts of revenge are of this class, and still more so thoughts of impurity. A thought about impurity may be either no sin at all, or it may be a venial sin, or it may be mortal. A thought about impurity is no sin at all if there is good reason for entertaining the thought, as when a priest studies moral theology, and there is not proximate danger of consenting to it or to any evil motions which arise from the thought. Venial sin will be committed when there is no good reason for thinking of the bad object, and the danger of consenting to evil is not proximate. If this danger is proximate, mortal sin will be committed when the object is grievously sinful.

3. The case. Caius committed venial sin in indulging his curiosity, but as far as the case allows us to judge he does not seem to have committed mortal sin. After his curiosity was aroused the master acted rightly in briefly and clearly explaining to him the physiology of generation, but he should have told him not to think or talk about the matter with others, and he should have told him where the danger of sin lay. The master acted very imprudently in giving a public lecture on the subject in class; the few cases in which it would have done good had better have been treated privately. In other cases in all probability it would have done harm by needlessly directing attention to what should not be thought about except at the proper time, and by occasioning comment and talk about the matter among the boys, to their serious danger.

6

DRUNKENNESS

Titius audierat ebrietatem voluntariam non esse per se et necessario peccatum, sed tunc tantum quando sine necessitate quis sese inebriat. Unde quum per infortunium fregisset brachium et maximos dolores exinde pateretur, quum aliud remedium non haberet se inebriavit dum medicus vocabatur qui brachium sanaret. Alias quum per plures noctes somnum vix ullum cepisset, sese inebriavit et per duodecim horas profundo somno erat sopitus. Quum etiam filiam carissimam morte amisisset, et in magnam melancholiam cecidisset, tandem dolorem copiosis potationibus usque ad ebrietatem extinxit. Tandem quum sensim sine sensu occasiones ebrietatis multiplicarentur conscientia motus confessarium adiit qui interrogat:

1. Num ebrietas sit intrinsece mala et in quo sit ejus malitia reponenda?
2. Num liceat se vel alium inebriare?
3. Quid ad casum?

Solution

1. Is drunkenness intrinsically evil, and in what is its malice to be placed?

Yes; drunkenness is intrinsically evil, or, in other words, it is inordinate and wrong in itself; it is not wrong merely because it is prohibited. Its malice more probably does not consist in any single element, but in several. It consists in

voluntarily depriving oneself of the use of reason for a considerable time by drinking intoxicating liquor to excess without good cause. The malice of drunkenness, then, does not consist merely in depriving oneself of the use of reason; we may do that both naturally in sleep and artificially by using an anesthetic for a good reason. Probably, at least, a man bitten by a poisonous snake may make himself drunk by way of antidote. But without sufficient cause to deprive oneself of man's noblest attribute by worse than brutish excess in drinking intoxicating liquor is inordinate and wrong.

2. Is it lawful to make oneself or another drunk?

These are disputed questions among theologians. According to St. Alphonsus [1] a man may take intoxicating drink in order to expel bad humors from the body, even though he foresees that the drink will deprive him of the use of reason, but he may not take it to make himself drunk, for that is always intrinsically evil. However, other theologians, in keeping with what was said above, allow a man to make himself drunk for a sufficient reason. The only question will be about the sufficiency of the reason. As to the question whether it is lawful to make another person drunk, St. Alphonsus acknowledges that the opinion is probable according to which one may make another drunk even with his knowledge when it is the only means available to prevent him from committing a still greater sin on which he is determined.[2]

3. The case. Titius had heard of the theological doctrine that drunkenness is not always and necessarily sinful, but only when a man gets drunk without sufficient reason. He applied the doctrine first when he broke his leg and suffered great pain. Having no other remedy at hand, he made him-

[1] Lib. v, n. 76. [2] St. Alphonsus, lib. v, n. 77.

self drunk till the doctor came and set the limb. Titius may be excused for this. On another occasion when he had got scarcely any sleep for several nights, he made himself drunk and slept for twelve hours. Some theologians would excuse Titius from sin in this case also; but it is preferable to say that he should consult a doctor, or take exercise in the fresh air, or adopt some other remedy, as taking drink in excess for sleeplessness would almost certainly lead to abuse, and therefore it must be forbidden.

In taking drink to drown his sorrow for the loss of a dearly loved daughter Titius committed sin. For such spiritual evils spiritual remedies should be used, or at least not such remedies as getting drunk; otherwise terrible abuses would creep in and have to be condoned. The confessor therefore will know what to say to Titius, whose wrong application of a right principle led to abuse in his own case.

7

THE PHILOSOPHIC SIN

Caio sacerdoti videtur theologos etiam recentiores non satis circumstantias in quibus rudiores præsertim inter fideles hodie vivunt ponderare quando de malitia peccatorum disserunt. Plurimi enim peccatis ebrietatis, luxuriæ, omissionis sacri diebus de præcepto ab infantia ita sunt assueti ut ea aliaque quasi nihil reputent; accedunt habitus mali ab infantia contracti qui conscientiam obcœcant voluntatemque debilitant; præterea tales vix unquam de Deo cogitant nisi forte quando ad Ecclesiam veniunt, unde etiamsi male agant Deum offendere cum periculo æterni supplicii non intendunt. Quibus rationibus ductus Caius rudiores qui talia confitentur levi omnino pœnitentia imposita facile absolutos dimittit. Unde quæritur:

1. Quid sit peccatum mortale et quid ad mortaliter peccandum requiratur et sufficiat?
2. Num detur peccatum philosophicum?
3. Num detur ignorantia invincibilis de lege naturali et de obviis status proprii obligationibus?
4. Quid de theoria Caii et de ejus modo agendi?

Solution

1. What is mortal sin and what is necessary and sufficient in order to sin mortally?

A mortal sin is a grievous offence against Almighty God, a turning away from God, our last end, and a preferring of

some creature to Him. It robs the soul of the grace and friendship of God which constitute its life. It causes the spiritual death of the soul, and on this account it is called mortal. If a man dies while in the state of mortal sin, he can not enter heaven without the wedding garment of God's grace, and he will be condemned to eternal punishment in hell.

To sin mortally three conditions are necessary and sufficient. The matter must be serious, that is, the act done must be notably inordinate and wrong; it must be a serious disturbance of right order in itself, or because it is contrary to a grave precept imposed by a legitimate authority. At the time when the sin is committed the sinner must clearly know and advert to the malice of his action. This does not mean that he must reflect expressly on the fact that he is doing wrong, or that he is offending God, or that he is doing something that deserves hell. A man who does not expressly think of God or of hell can certainly commit mortal sin. It means that he is fully conscious of what he is doing and that he knows that it is seriously wrong. He may not realize the consequences of his act; what sinner ever did realize the terrible consequences of mortal sin? Moreover, there must be full consent given to the act. A mere hesitation or dallying with the temptation is not sufficient; there must be full and perfect consent to what is known to be seriously wrong.

2. Does philosophic sin exist?

By a philosophic sin is meant an act against right reason without being an offence against God. Alexander VIII, on Aug. 24, 1690, condemned the following proposition: "A philosophic or moral sin is a human act at variance with a rational nature and right reason; a theological and mortal

sin is a free transgression of the divine law. A philosophic sin, however grave, in him who is either ignorant of God or does not actually think of God, is a grave sin indeed, but it is not an offence against God, nor a mortal sin depriving the sinner of the friendship of God, nor deserving of eternal punishment." A sin, therefore, which is seriously against a rational nature and right reason is also an offence against God which robs the sinner of God's grace and merits the punishments of hell. Implicitly contained in the judgment of the sinner that an act which he performs is against right reason and wrong, is another judgment that it is against the law of God; for right reason applied to moral action is nothing but a participation of the eternal law of God which commands right order to be observed, and forbids it to be disturbed. Therefore, there is no such thing as a merely philosophic sin.

3. Is there such a thing as invincible ignorance of the natural law and of the ordinary obligations of one's state of life?

Among people who have the use of reason invincible ignorance of the general principles of morality, such as are contained in the Decalogue, can not be admitted. No human society could long hold together unless those general principles were known and ordinarily acted upon. The same is true of the ordinary obligations of one's state of life. Invincible ignorance about the application of those general principles in particular circumstances and cases exists not only among the less instructed but among the better instructed also. Hence the variety of opinions among moral theologians.

4. The case. Caius, a priest, thinks that moral theologians do not take sufficient account of the circumstances in

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which the faithful of the humbler sort live in our days. Very many are so accustomed from childhood to sins of drunkenness, lust, and neglect of Sunday Mass, that they scarcely think anything of them; they contract bad habits in childhood which blind their consciences and weaken their wills; besides, such people scarcely ever think of God except perhaps when they come to Church, and so even if they do wrong, they do not intend to offend God with danger of eternal punishment. For these reasons when such people confess such sins to him Caius imposes a light penance and absolves them without difficulty.

Caius is wrong in acting in this way, and instead of helping his penitents to lead better lives he will probably make them think still less of sin and commit it more readily. What he says is unfortunately true of large numbers in our towns. Their antecedents and surroundings have much to do with their sad condition. Still the fact that many in the same circumstances lead very good lives shows that even their wretched surroundings do not deprive them of the power of being good if they choose to be so. We know that unfortunately men may know very well what sin is, and yet drink it in like water. From what was said above it is plain that to commit sin it is not necessary to think expressly of God or of the punishments of hell; it is sufficient if they know that what they do is seriously wrong. They may be partly excusable on account of their surroundings; how far can be known only to God. Caius, however, should change his method of dealing with them; he may be as considerate and kind as he can be; but he should be a more faithful dispenser of the mysteries of God. As the Council of Trent teaches, he should impose penances which are salutary and have some proportion to the number and gravity of the sins

confessed, and try to arouse in his penitents a hatred and detestation of sin. Of course he must also be on his guard against frightening such penitents away from the sacraments by imposing penances that are too severe for them.

8

THE SPECIFIC AND NUMERICAL DISTINCTION OF SINS

Caius juvenis catholicus et societati cuidam secretæ addictus mandatum accipit a capite ut Tullium societatis proditorem trucidet. Quod ut faciat locum quærit ubi Tullius habitet, se tamquam socium ei adjungit, omnia de ejus vitæ ratione investigat, ut eo facilius et securius facinus patret. Non semel tamen remorsu conscientiæ ductus negotium infectum relinquere et vitæ propriæ consulturus patriam fugere statuit. Nihilominus arma parat et tandem aliquando post aliquot hebdomadas a proposito suscepto, præsertim propter factum ab ipso detectum quod Tullium maxime ipsi odiosum reddit, eum ad rixam in loco secreto provocatum occidit. Unde quæritur:

1. Quomodo peccata varias species sortiantur?
2. Quomodo peccata quoad numerum distinguantur?
3. Quorum mentionem facere debeat Caius ut integre confiteatur?

Solution

1. See the answer to this question in "Manual of Moral Theology," vol. i, p. 141.

2. The answer to this question is in "Manual of Moral Theology," vol. i, p. 143.

3. What particulars of his crime must Caius mention so as to make a full confession?

Caius, a young Catholic who belongs to a secret society,

received orders from its head to kill Tullius, who had betrayed its secrets. To execute the mandate Caius found out where Tullius lived, made his acquaintance, and studied his manner of life, in order to be able to kill him with greater security and ease. More than once he determined not to commit the crime and to fly the country. However, he bought weapons, and at length after some weeks, especially on account of having found out something about Tullius which made him an object of great hatred to him, Caius provoked him to a quarrel in a lonely place and killed him. Caius must, of course, confess that he has committed homicide, and he must say as far as he can how often he changed his mind about committing the crime, for such changes of resolution will break up the sin into as many smaller ones as there are changes. He need not mention any other circumstance, for the means which he took to commit the crime were indifferent in themselves and only gave unity to the internal intention. The grave hatred, too, is sufficiently confessed by confessing the murder itself, which is a mortal sin against charity, unless before the murder was committed and on other occasions the hatred was manifested in ways which had nothing to do with the crime which followed, for then there would be as many different sins of hatred as there were different manifestations of it. The quarreling which immediately preceded the murder formed part of the final crime and need not be distinctly and separately confessed.

FAITH

1

MASCULINE AND FEMININE VIRTUES

Titius juvenis catholicus qui studiis medicalibus operam dabat omnia in dubium revocari a sodalibus audire solebat. Quidam inter illos aperte asserebat mores paganos Christianis esse præferendos, et Titio contrarium pro viribus propugnanti librum celebris auctoris tradebat in quo sequentia leguntur: "In antiquity the virtues that were most admired were almost exclusively those which are distinctively masculine. Courage, self-assertion, magnanimity, and, above all, patriotism were the leading features of the ideal type; and chastity, modesty, and charity, the gentler and the domestic virtues, which are especially feminine, were greatly undervalued. . . . The change from the heroic to the saintly ideal, from the ideal of Paganism to the ideal of Christianity, was a change from a type which was essentially male, to one which was essentially feminine. . . . Pagan sentiment was chiefly a glorification of the masculine qualities of strength, and courage, and conscious virtue, while Christian sentiment is chiefly a glorification of the feminine qualities of gentleness, humility, and love." [1] Quum Titius quod responderet non haberet, ad amicum sacerdotem accessit et auxilium in difficultatibus petiit. Unde quæritur:

1. Num *self-assertion* sit virtus?

[1] W. H. Lecky, European Morals, vol. ii, pp. 382–384.

2. Quid sit dicendum de concepto pagano magnanimitatis?

3. Num distinctio inter virtutes masculinas et femininas admitti et num religio Christiana his favere dici possit?

Solution

1. Is self-assertion a virtue?

Self-assertion may be understood merely in the sense of defence of one's own rights and opinions, and in this sense it seems to belong to the virtue of fortitude. But like self-love, which generally implies excess, self-assertion ordinarily means the thrusting of oneself forward unduly, the tendency of a masterful and ambitious character. In this sense it is a vice, and belongs to pride, ambition, or vainglory.

2. What is to be said of the pagan idea of magnanimity?

Aristotle describes the magnanimous man in a celebrated chapter of the "Ethics."[1] The magnanimous man, according to Aristotle, has great gifts and great natural virtues, but these are all spoiled by pride. He is fully conscious of his merits, he considers them his own, without referring them to God, and claims for them great honor as due to himself from men. He knows how inferior other men are to himself, and despises them. Magnanimity has to be seasoned with the Christian doctrine about God and man's relation to Him, the foundation of Christian humility, before it can become a Christian virtue. This is admirably done by St. Thomas.[1]

3. Can the distinction between masculine and feminine virtues be admitted, and can it be said that the Christian religion favors the latter?

[1] Book iv, c. 3.

[2] II–II, q. 129. Cf. Catholic Encyclopedia, *s.v.* Honor.

A virtue is nothing but a habit of well-doing, and as both men and women should have, and practise, all the virtues, no distinction can be admitted between masculine and feminine virtues. The type of Christian perfection is Christ Himself, in Whom all virtues are seen in their fullest development and luster, and as both men and women are bound to form themselves after the model which He set them, it cannot be said that Christianity favors the gentler at the expense of the robuster virtues. The Christian type is a harmonious blending of the gentle and robust virtues; a Christian hero, like St. Louis of France, shows the combination in all its perfection; he is gentle and humble, but he is also strong and high-minded; in a heroine like St. Teresa, we have the same harmonious blending in a female saint. This element of truth in Lecky's observations may be conceded — the Christian religion insists on meekness, humility, chastity, and charity, and defends the weak; while Paganism was too indulgent and condescending to brute force and strength. But while insisting on the gentler virtues, Christianity by no means forgets the more virile. Perhaps it may be allowed, too, that as man still remains to a great extent a savage, the virtues of courage, fortitude, and others of the same kind do not need to be insisted on so much. Perhaps the tendency of unregenerate human nature is to admire them too highly, and so it is not advisable for Christian teaching to stress them as well.

2

DISPOSITIONS OF CONVERTS

Caius sacerdos missionarius multum occupatus plures acatholicos in Ecclesiam recepit. In quibus tamen instruendis ante receptionem non laborat, sed dato catechismo et aliqua instructione a laicis quibusdam accepta, quando declarant se catechismum intelligere et velle in Ecclesiam recipi, mox sine mora eos recipit, intra se dicendo non posse præsertim rudiores intelligere quæstiones difficiles de motivis credibilitatis religionis catholicæ, et eos omnia necessaria paulatim intellecturos. Verumtamen propter quædam recenter a se detecta scrupulis angitur de isto modo procedendi, imo de liceitate aliquibus ex eis sacramenta administrandi, nam unum audivit ex suis conversis dicentem se majori tantum probabilitate ductum Ecclesiam esse ingressum, nec postea certitudinem majorem esse adeptum. Unde quæritur:

1. Quænam dispositiones requirantur ut acatholici in Ecclesiam recipiantur?

2. Quænam motiva credibilitatis religionis catholicæ requirantur et sufficiant ut præsertim rudiores fidem amplecti possint?

3. Num liceat absolvere eum qui de fide dubitet?

4. Quid ad casum?

Solution

1. What dispositions must non-Catholics have to be received into the Church?

They must believe with a firm faith all that the Catholic Church proposes to be believed, and they must have the purpose of performing all the duties which are of obligation for Catholics. With regard to the faith, it is not sufficient to believe everything implicitly. It is necessary as a means of salvation to believe explicitly that God exists, that He is a rewarder of them that seek Him, and probably also the mysteries of the Blessed Trinity and of the Incarnation. It is of precept to believe explicitly the articles of the Faith contained in the Creed, the sacraments which the faithful are under the obligation of receiving, the Lord's Prayer, and the precepts of the Decalogue and of the Church. Hence the necessity of instruction in all these matters.

2. What motives of credibility of the Catholic religion are necessary and sufficient so that especially the illiterate may be able to embrace the Faith?

The Council of the Vatican teaches that miracles and prophecy are motives of credibility which are suited to the capacity of all. The existence, history, and fertility in good of the Catholic Church is also a motive by itself for embracing and persevering in the Faith, and it is suited to the capacity even of the illiterate. The motives should be such as to render the Catholic religion evidently credible, and, moreover, such as can not be displaced by future experience or learning. On this account, although motives which are respectively sufficient to produce moral certainty in illiterate minds, though not in others, might be sufficient to enable the illiterate to make an act of faith, yet even the illiterate should be furnished with something more solid and stable before being admitted into the Church.

3. Is it allowable to absolve one who doubts about the Faith?

No, it is not. If he positively doubts whether some article of the Faith is true, he is a heretic. If he doubts negatively or suspends his assent, he sins gravely against the Faith, and can not be absolved as long as he remains in that state.

4. The case. Caius, a missionary priest and a busy man, received many converts into the Church. He did not take great pains in their instruction, but gave them a catechism, and after they had received a certain amount of instruction from some pious lay people, on their declaring that they knew the catechism and wished to be received into the Church, he received them, saying to himself, that the illiterate especially could not understand difficult questions about the motives of credibility of the Catholic religion, and that they would by degrees learn all that was necessary.

In this Caius made a mistake. It would have been better to receive a few converts well instructed than many badly instructed. Ignorance of their religion is one of the causes why so many Catholics lead un-Catholic lives, and profess such un-Catholic sentiments. Many ill-instructed converts leave the Church when difficulties arise. Caius should, at least, see that his converts have a good knowledge of the catechism. It is not necessary for them to go into difficult questions about the motives of credibility, but they should have some clear idea why they wish to become Catholics, and in some way that reason should be reducible to one or other of the ordinary motives of credibility.

Caius began to have scruples about his method of dealing with converts when he heard one of them say that he came into the Church because he thought that more probably it was the true Church of God, and that he has never

had greater certainty than that. Caius had reason to be troubled, for this convert had never been a Catholic at all, inasmuch as he never had the Faith, as we gather from the twenty-first proposition condemned by Innocent XI: Assensus fidei supernaturalis et utilis ad salutem stat cum notitia solum probabili revelationis, immo cum formidine qua quis formidet ne non sit locutus Deus. Caius may not administer the sacraments to such as these until they are better instructed and until they firmly, without any doubt, believe the Catholic faith.

3

EXTERNAL PROFESSION OF THE FAITH

Caius minister Anglicanus moribundus advocavit Titium sacerdotem catholicum et petiit ut in Ecclesiam catholicam quam firmiter credebat esse solam Ecclesiam Christi reciperetur. Quoad cetera Titius eum optime dispositum invenit, attamen omnino velle ut sua receptio in Ecclesiam secreta servaretur ne uxor ac liberi pensione privarentur ad quam jus viduæ ministrorum anglicanorum habeant. Titius vero dubitabat utrum sub hac conditione eum recipere posset necne. Unde quæritur:

1. Num unquam fidem denegare liceat?
2. Num et quandonam fides sit externe profitenda?
3. Quid in receptione conversorum sit faciendum?
4. Quid ad casum?

Solution

1. Is it ever lawful to deny the Faith?

No, it is never lawful to deny the Faith: "He that shall deny Me before men, I will also deny him before my Father who is in heaven."[1]

2. Must the Faith be openly professed, and when?

Yes, it is at times necessary to profess the Faith openly; it is not sufficient to believe merely internally. This is required by the natural and divine law, as well as by positive law. A solemn profession of faith must, by positive law,

[1] Matt. x. 33.

be made by converts on their reception into the Church, by bishops at their consecration, by priests at their ordination, and by certain ecclesiastical functionaries on their assumption of office. We are chiefly concerned in this case with profession of faith which is required by natural and divine law. Like all positive precepts it always obliges, but not for always; in other words, there are certain occasions when the precept must be fulfilled; it does not oblige on all occasions whatever. The general rule is that the Faith must be openly professed whenever the honor of God, the spiritual good of one's neighbor, or one's own good requires it.

3. What is to be done in the reception of converts?

Inquiry must first of all be made about the baptism of the convert, he must be instructed, and where the bishop requires it, the leave to receive him must be obtained from the bishop. If the convert has not been validly baptized, he is only required to make a profession of faith, and he is baptized according to the Ritual with the longer form, unless an indult has been obtained to use the shorter form prescribed for infants. If he was baptized before, but the validity of the baptism is doubtful, he must make a profession of faith, and then conditional baptism is conferred (in England privately with holy water and without the ceremonies); then he is conditionally absolved from censures, and after making a general confession of his whole life he receives sacramental absolution conditionally. If he was validly baptized, he makes profession of his faith, is absolved from censures, and then makes his confession and is absolved. Youths before puberty are not absolved from censures.

4. The case. Caius, an Anglican minister, called Titius,

a Catholic priest, and asked to be received into the Church. Caius was dying. Titius found him well disposed in other respects, but he desired that his conversion should be kept secret for fear lest his wife and children should be deprived of a pension to which they would have a right as the widow and children of an Anglican minister. Titius doubted whether this could be allowed.

No; Caius could not be received on that condition. The conversion of one in his position is likely to give great honor to God and to the true religion, and to be a cause of conversion to others.[1] In all probability the society which granted such pensions as are mentioned in the case would never dream of depriving Caius' widow and children of theirs because of his conversion on his death-bed. Perhaps, through some friendly source, assurance on this point could be obtained and communicated to Caius, who might then be received unconditionally.

[1] Cf. Collectanea S. C. de P. F., nn. 44, 84. 2d ed.

4

AN ORATORIO IN AN ANGLICAN CHURCH

In quodam oppido quum scholæ anglicanæ elementares pecunia indigerent, Anglicani statuebant cantare quadam Feria V in sua ecclesia oratorium quod *Messiah* vocatur, ad quod audiendum populus pretio admitteretur et proventus scholarum necessitatibus applicarentur. Quum autem cantatores anglicani non sufficerent quosdam catholicos inter alios Caium rogaverunt ut auxilium præstarent. Caio roganti utrum aliqua functio religiosa esset simul peragenda responsum fuit ministrum anglicanum initio precationem fusurum generalem, nec quidquam aliud præter *Messiah* factum iri. Caius non vult auxilium concivibus denegare præsertim quum ipsi sæpe catholicos juvent, nescit tamen utrum hoc in casu petitioni annuere sit licitum. Unde quæritur:

1. Quid sit communicatio in sacris et quatenus cum hæreticis prohibeatur?

2. Num liceat cooperari ad religionem falsam promovendam?

3. Quid ad casum?

Solution

1. What is *communicatio in sacris* with heretics, and how far is it forbidden?

Communicatio in sacris means joining in religious functions, rites, ceremonies, with heretics and non-Catholics generally. Such an act is in general prohibited by divine

and natural law as well as by positive ecclesiastical law. God has established one form of worship. He desires men to use that form when they worship Him; any other worship is displeasing to Him. That form of worship is used exclusively in the Catholic Church, the only true Church of Christ. For a Catholic, then, to take part in non-Catholic worship of God is to commit a sin against religion and the Faith. Such an act is also likely to cause scandal, and is wrong on this account. Moreover, the Church's positive legislation must be considered. Heretics and schismatics are excommunicated, or cut off from communion with the faithful. Before the Council of Constance (1414) the faithful were forbidden to hold communication with heretics either in religion or in civil matters. By a decree of that Council (*Ad Evitanda*) Catholics were allowed to communicate with heretics as far as ecclesiastical law is concerned, unless such heretics had been censured by name. Heretics censured by name are to be avoided still, at least in all religious matters; intercourse is allowed with others who are tolerated, except in so far as divine and natural law forbids it.

2. Is it lawful to co-operate in furthering the cause of a false religion?

It is never lawful to co-operate formally with such a cause; but to co-operate materially with it is not wrong, provided that there be a sufficiently grave cause, provided that what is done is not in itself wrong, and provided that the intention be good.

3. The case. The Anglicans in a certain town determined to perform Handel's "Messiah" in their church on a Thursday, and to admit the public on payment, in order to provide funds for the Anglican elementary schools of the

town. They had not sufficient singers, and they asked Caius, a Catholic, to help them. They told Caius that there was to be no religious function besides a general prayer offered by the parson at the commencement of the oratorio. As the Anglicans have often helped Catholics in similar circumstances, Caius would like to help them in return if it is not wrong.

It is better to avoid taking any part in non-Catholic functions which in any way are connected with religion as far as possible. All the more must this be done, if scandal would be caused by such action. In some countries and circumstances such an action would be considered as a favoring of heretics and wrong; and in some it would be forbidden by positive law. This being supposed, let us see whether Caius is bound, under pain of sin, to refuse his help, supposing that there would be no scandal, and that there is no special prohibition of the Church, as might easily be the case in countries like England. Under these circumstances, we think that Caius might take part in the oratorio without committing sin. The object is to provide funds for Anglican elementary schools, but such an object is not directly religious. Caius takes no part in any distinctively Anglican religious service. His reason is, because he wishes to make a return for a similar service.

5

JOINING IN NON-CATHOLIC RELIGIOUS RITES

Titius sacerdos missionarius rogatur a Paulo viro inter parochianos spectatissimo utrum liceat catholicis interesse nuptiis hæreticorum. Ab amico enim præstantissimo quamvis acatholico rogatus est Paulus permittere ut filia sua adsistat tamquam paranympha (bridesmaid) matrimonio filiæ ejus. Ante responsum dandum Titius auctores recentes consuluit, quorum aliqui id permittere videntur, alii vero esse illicitum affirmant. Unde Titius quærit:

1. Quid sit communicatio in sacris cum hæreticis et quatenus sit licita vel illicita?

2. Num catholicis liceat hæreticorum templa adire eorumque matrimoniis interesse?

3. Quid ad casum?

Solution

1. See the answer to this question, p. 147.

2. Are Catholics allowed to visit non-Catholic places of worship, and to be present at non-Catholic marriages in such places?

Catholics are not allowed to visit non-Catholic places of worship whenever such visiting is looked upon as an adhesion to, or as a favoring of, a false religion, or when it causes scandal, or danger of perversion, or when it is forbidden by lawful authority. In other cases, it is not unlawful. With regard to being present at marriages in non-

Catholic places of worship, as a general rule it is not allowed, but for a good reason it may be tolerated if there is no scandal, no danger of perversion, nor contempt of ecclesiastical authority, as the Holy Office answered, Jan. 14, 1874.[1]

3. The case. Titius, a missionary priest, was asked by Paul, one of the principal members of his congregation, whether Catholics may be present at non-Catholic marriages. Paul asks the question because he has been requested by a non-Catholic friend who holds a high position to allow his daughter to act as bridesmaid, on the occasion of his own daughter's marriage. Titius finds that recent authors are at variance on the point. Marriage celebrated in a non-Catholic place of worship is a religious rite, and so, inasmuch as Catholics are not allowed to take part in non-Catholic religious rites, they may not take part in such a marriage. Under the conditions mentioned above it is tolerated that Catholics should be present merely materially and passively, as onlookers at the function, as an act of courtesy. But a bridesmaid takes part in the function, and so such an action goes beyond what is allowed. This is confirmed by an answer given by S. C. de P. F., March 12, 1789, that it not lawful for a Catholic to act as best man in a marriage of Greek schismatics.[2] However, an instruction of the Holy Office, June 22, 1859, allows a non-Catholic to act as best man in a Catholic marriage.[3]

[1] Collectanea S. C. de P. F., n. 1410. 2d ed.

[2] Collectanea S. C. de P. F., n. 600. Cf. Tanquerey, De Fide, n. 681.

[3] Collectanea, n. 1176.

6

A TOO-ACCOMMODATING MATRON

Maria bona catholica in quodam ptochotrophio matronam agit. Frequentat quidem catholicam ecclesiam rogatur autem a ministro anglicano qui in ipso ptochotrophio divinum servitium pro anglicanis dirigit ut assistat et cantet in isto servitio, quum præclara voce gaudeat et post Missam servitium celebretur. Consentit Maria, et quum advertat non omnes anglicanos in domo adesse servitio eos postea hortatur ut adsint, et sic gratiam ministri quam maxime conciliat. Quum vero legeret librum quemdam de indifferentismo scrupulos de his concipiebat, ac proinde de eorum liceitate confessarium interrogabat. Unde quæritur:

1. Ad quid catholicus obligetur ratione fidei externe profitendæ?

2. Quid sit cooperatio cum peccato alterius et quatenus illicita?

3. Quid ad casum?

Solution

1. See this question answered, p. 144.

2. What is co-operation in another's sin, and how far is it unlawful?

Co-operation, in general, is the helping of the principal agent in the doing of an action. Hence one who helps another to commit sin co-operates with him in that sin. This co-operation is formal or material. There is formal co-operation when help is given to do what is sinful and

what can not be done without sin. Co-operation is material when help is given by doing something which is not sinful in itself, but which the principal agent abuses in order to commit sin. Formal co-operation in another's sin is never lawful; material co-operation is lawful when the action of him who co-operates is good, or at least indifferent, and when there is a sufficient reason for the co-operation proportionate to the evil co-operated in, and to the closeness of the co-operation.

3. The case. Mary, a Catholic, is matron in an orphanage. She goes to the Catholic Church, but is asked by the Anglican minister, who conducts the Anglican service in the orphanage, to sing at the service, as she has a good voice, and the service is held after Mass, so that it will not prevent her going to her own Church. Mary consents, and still further conciliates the minister by urging all the Anglicans in the house to attend the service. From reading a book on indifferentism, she gets a scruple about the lawfulness of these actions, and asks her confessor about them.

Her confessor will tell Mary that she had done wrong, although she was excused on account of her good faith. She did wrong in taking part in non-Catholic religious services, for, as we saw above (p. 148), all such action is wrong. In urging others to join in Anglican worship, which she knew or ought to have known to be false, she also did wrong, although, of course, Anglicans, believing in it in good faith, join in it without committing sin. Mary should allow the inmates to follow their consciences with regard to their religious duties, and she should see that the time allowed for this purpose in the institution is not interfered with, but for the rest she should leave them alone.

CHARITY

1

ALMSGIVING

Titius operarius qui in quodam oppido degebat frustra per plures hebdomadas laborem quo se suosque sustentaret quæsiverat. Pecunia quam habebat jam erat expensa et familia cibo a bona quadam femina dato vivebat. Per aliquot tamen hebdomadas redditus nullus domino debitus ob ædium locationem erat solutus, qui nisi hoc sabbato solvatur ædes relinquere oportebit. Quum sciret Titius alias aedes ab inope vix obtinendas esse pergebat ad Caium satis divitem Catholicum cui erat cognitus et petiit ut adjuvaret ad redditum solvendum. Recusabat tamen Caius eo quod vectigalia pauperum sat gravia jam essent, et quia apud se statuisset nunquam eleemosynas daturum nisi esset necessarium ad vitam alicujus salvandam, quia constet plerosque mendicantes esse fictitios pauperes. Postea vero scrupulo tactus quia sciret Titium vera in necessitate esse constitutum rogabat Caius confessarium utrum in tali casu eleemosynas dare teneretur. Unde quæritur:

1. Ad quid in genere charitas obliget?
2. Quæ et qualis sit obligatio eleemosynas dandi?
3. Quid ad casum?

Solution

1. To what in general does charity oblige us?

Charity, in general, obliges us to love God above all things, for His own sake, and our neighbor as ourselves, for

the sake of God. Love here does not designate a feeling, but an act of the will by which we are determined to cling to God and not to be separated from Him by sin, because we esteem Him above all other things whatever. The first material object of charity is God Himself; the second is our neighbor. Charity for our neighbor obliges us to both internal and external acts. Internally we are bound by the law of charity to wish well to all, to pray for all, and never to allow ourselves any thought, word, or deed, to the injury of any one. This internal love shows itself in deed by helping our neighbor in his necessities as far as we can.

2. Of what sort is the obligation to give alms?

Alms is help given to the indigent in their necessity, and that there is an obligation to help the indigent as far as we can follows from the nature of charity, and from the express words of Holy Scripture in many places.[1] In order to measure the gravity of this obligation, we must consider the necessity in which he who is to be helped is placed, and the capacity of helping him of the person who is to be bound by the obligation. Theologians distinguish three degrees of necessity. A poor man is in extreme necessity when he is in danger of dying from starvation, and can do nothing to help himself. If one is in the same danger, but can, with difficulty, do something to help himself, he is in grave necessity. Ordinary beggars are in common necessity. The goods out of which alms can be given are either necessary for the support of one's own life and the lives of those who are dependent on us, or are necessary to live in the style suitable to one's condition in life, or they are superfluous. As a general rule, we are bound to give alms only out of our superfluity. This

[1] Cf. 1 John iii. 16.

obligation is grave when we find a neighbor in extreme, or in grave necessity; in the common necessity of another it is probably only light.

3. The case. Titius was a workman in a certain town, but he had been out of work for several weeks. All his savings had been spent, and his family lived on food given them by a good neighbor. The rent for his house was in arrears and the landlord gave him notice to quit unless the rent was paid by the end of the week. He knew that there was little chance of getting other lodgings in the circumstances, so he went to Caius, a well-to-do Catholic to whom he was known, and asked him for help toward paying his rent. Caius refused on the ground that the poor rates were heavy and because he had made a resolution never to give alms unless to one in extreme necessity. However, Caius was afterward uneasy about what he had done and asked his confessor whether there was an obligation to give alms in such a case.

His confessor will doubtless tell Caius that there is a grave obligation to give alms in such a case as is here given. Titius and his family were in grave necessity, as they were in danger of being thrust out of their home without the prospect of being able to find lodgings elsewhere. Caius knew that this case at any rate was genuine. There was no indication of the help required being obtainable from some other source. Caius could afford what would have been sufficient to relieve the distress of Titius. Under these circumstances Caius was strictly bound by a grave obligation to help a poor fellow-Catholic.[1] The reasons why some theologians allow that grave sin may not be committed by refusing alms in such cases are excluded

[1] Cf. Matt. xxv. 42.

by the circumstances of this case. It is no excuse to say that the man and his family might have gone to the workhouse. A respectable workman would not unfrequently rather die than subject himself and his family to such a disgrace and moral danger, and such feelings claim our respect and consideration.

2

SCANDAL

Julius dux belli anglus in India quum videret quam plurimos milites propter morbos venereos ex vilibus meretricibus contractos ad bellum fieri ineptos meretrices omnes morbo infectas expulit e castris, et rogavit Caium officialem inferiorem et catholicum ut sanas mulieres pro usu militum provideret. Caius quamvis sciret juxta leges exercitus Julium mandatum urgere non posse, acquievit et plures sanas mulieres procuravit. Sauciatus in Angliam reversus dum sacerdoti confitebatur utrum licite egisset rogabat. Unde quæritur:

1. Quid sit peccatum scandali et quomodo directum et indirectum distinguantur?

2. Unde oriatur obligatio abstinendi a scandalo præsertim directo?

3. Num sit peccatum scandali inducere ad peccandum aliquem ad id jam paratum?

4. Quid ad casum?

Solution

1. What is the sin of scandal and what is the difference between direct and indirect scandal?

Scandal is any word or action having at least the appearance of evil which is the occasion of sin to another. When another's sin is intended by him who gives scandal, this scandal is direct; when it is foreseen but not intended, it is indirect.

2. Whence arises the obligation of abstaining from direct scandal especially?

We are obliged to abstain from giving scandal in the first place because it is against charity, and against the special obligation of fraternal correction which has its root in charity. He who gives scandal is the cause of sin to his neighbor, whereas he should do what he can to prevent the sinner from falling into sin, and to recover him when he has fallen. Direct scandal is also against that special virtue which is violated by him who sins through scandal. Thus he who incites another to drink to excess sins against charity and against temperance.

3. Is the sin of scandal committed by one who invites another to sin who was already determined to commit that sin?

St. Alphonsus teaches that at least with regard to those things that are intrinsically evil, such as fornication, the sin of scandal is committed by inviting another to execute what he was already determined on doing. The reason is because the execution of an evil purpose constitutes with that purpose a complete and perfect sin, distinct in species from the merely internal and habitual intention of sinning.[1]

4. The case. From the answer to the last question it is clear that Caius was not justified in acting as he did. His superior officer had no authority to give him such an order according to the regulations of the British army, and in any case Caius could not execute it without committing sin. In reality he became procurer for the soldiers. This solution does not preclude the medical examination of prostitutes so as to guard against the infection of the soldiers.

[1] St. Alphonsus, lib. ii, tract. 3, n. 47.

3

SCANDAL AND CO-OPERATION

Agatha et Lucia illa catholica hæc Anglicana altæ ecclesiæ ut vocatur, vinculo amicitiæ inter se erant conjunctæ. Sæpe se invicem adjuvabant in operibus charitatis, imo non raro Lucia opem ferebat Agathæ in religionis operibus, nominatim vero proxenetæ partes agebat in mercibus minoribus cujusque generis vendendis (took a stall at a bazaar), ut ecclesia catholica splendidius ædificaretur. Paulo post ecclesia anglicana quam Lucia frequentabat eisdem mediis adhibitis erat restauranda et Agatha rogabatur ab amica ut similes proxenetæ partes pro ecclesia anglicana et ipsa gereret. Negare nesciens assensa est Agatha, quinimmo aliquas res vendendas ipsa conferebat gratæ animæ erga Luciam testimonium. Haud parum tamen catholici scandalizabantur ac proin postea conscientiam turbatam Agatha confessario exonerabat. Quæritur:

1. Quando quis obligetur scandalum aliorum vitare?
2. Quando co-operatio in alterius peccato sit licita?
3. Quid ad casum?

Solution

1. When is one obliged to avoid giving scandal to others?

We must of course avoid giving scandal to others by doing anything wrong ourselves which will lead them into sin. We are also obliged to omit any action which is indifferent or good but not of precept by which scandal would

be given to the weak or ignorant, if we can do so without serious inconvenience. We may not omit in this case an action which is prescribed by natural law; whether we are bound to omit what is prescribed by positive law is a disputed question among theologians. We are not bound to avoid pharisaic scandal by omitting an action which is good or indifferent and which has no appearance of evil.

2. When is co-operation in another's sin lawful?

Formal co-operation in another's sin is never lawful; material co-operation is lawful provided that the action by which co-operation is given is good or at least indifferent, and provided that there is a good and proportionate reason for the co-operation (see p. 152).

3. The case. Agatha, a Catholic, and Lucy, an Anglican of the High Church party, were friends. They often helped each other in works of charity, and Lucy often helped Agatha in what she did for religion, taking a stall when a bazaar was held to raise funds for making an addition to the Catholic church of the place. When the Anglican church was to be restored, Lucy asked Agatha to take a stall for her, and Agatha not only consented but gave some objects to be sold at the bazaar as a mark of her gratitude. At this Catholics were scandalized, and so Agatha told what she had done when she went to confession.

There was no harm in the two friends working together in deeds of charity, and Lucy's help could be accepted in the Catholic bazaar. But Agatha should have shown her gratitude to her friend in some other way than by taking a stall and giving things to be sold at the Anglican bazaar held for the restoration of the Anglican church. For this is a religious object, and a Catholic is not at liberty to help

and show favor to a non-Catholic religious object. It naturally gave scandal to other Catholics. Agatha, therefore, was guilty of material wrong-doing as she seems to have acted in good faith, and she should avoid such actions in future, as a general rule. There might be exceptional circumstances which might excuse a Catholic who contributed to the restoration of an Anglican church because it was an ancient historical monument, if it could be done without scandal. In the case we suppose no such special circumstances to exist.

4

FRATERNAL CORRECTION AND RACE-SUICIDE

Paula matrona catholica confessarium rogabat utrum vera essent quæ censores morum publicorum dicant de generis suicidio (race suicide). Confessarius autem pleniorem quaesiti explicationem postulabat. Dein Paula agnoscebat se per plures annos vaginam aqua medicata lavare post usum matrimonii consuevisse quum nimis esset debilis quam ut prolem haberet, ac quum filia spopondisset officiali qui subito in coloniam distantem mitteretur nec posset stipendio exiguo familiam alere, Paula eam docuit quomodo vitam maritalem sine periculo prolis agere posset. Filia vero cum consensu mariti feliciter methodum a matre doctam adhuc in praxim deducit. Confessarius his auditis incertus est quid Paulæ dicere debeat. Unde quæritur:

1. Num post copulam habitam impedire quocumque modo conceptionem liceat?
2. Num et qualis sit obligatio correptionis fraternæ?
3. Quid de obligationibus confessarii et Paulæ in casu?

Solution

1. Is it ever allowed to take means to prevent conception?

St. Alphonsus says: "Nunquam licitum esse matri ob quodcumque periculum sumere potionem ad conceptionem impediendam."[1] And the doctrine remains the same, whatever means are taken for the purpose.

[1] Theol. Mor., lib. iii, n. 394.

2. Is there an obligation to give fraternal correction?

Yes, there is. This follows from the general obligation of charity which binds us to do what we can to help our neighbor in his necessity, whether spiritual or corporal. Hence if we know that another is in mortal sin and that he is not likely to correct it of himself, and there is nobody else who can or will do it better than ourselves, and there is good hope of succeeding, we are bound at a suitable time to do what we can to assist our neighbor to arise from his state of spiritual death.[1]

3. The case. The confessor is bound in the first place to tell Paula that what she has been doing is wrong, and she must promise not to do it again. Moreover she is responsible for having taught the practice to her daughter, and besides the latter's husband she is probably the only person who knows of the daughter's practice. She is, then, under the additional obligation of telling her daughter that what she taught her is wrong, and of doing what she can to induce her to abandon the practice for the future. The practice is harmful to her who employs it and is destructive of the race, so that it is rightly called race-suicide. The confessor, therefore, should explain to Paula the obligation she is under. Even if the means adopted sometimes failed in the desired effect, the act would always be gravely sinful on account of the intention with which it was done.

[1] Cf. Matt. xviii. 15.

5

QUESTIONS ABOUT SCANDAL

Bertha quæ apud herum acatholicum famulatur ad Jacobum confessarium accedens exponit facta sequentia de quibus scrupulum habet et judicium de illis exquirit: (*a*) Quotidie antequam cubitum ivit rosarium recitaverat, et coram aliis famulis, quamvis ob coronam precatoriam visam sumpsissent istæ occasionem Beatam Virginem Mariam blasphemandi. (*b*) Pluries non dubitaverat narrare fabulas minus pudicas prævidens alias famulas ansam inde probabiliter sumpturas esse ad sermones vere inhonestos incipiendos. (*c*) Ab ecclesia die dominica rediens frequentaverat vicos ubi juventus improba perambulat quamvis uni vel alteri occasionem sæpe præbuisset inhonesta proferendi. (*d*) Filiis familias quorum curam habuit occasionem esculenta furandi reliquerat ad illos capiendos et puniendos. Unde quæritur:

1. Quid sibi velit scandalum et quænam sint ejus species?
2. Quænam sit malitia scandali directi et indirecti?
3. Quænam sit obligatio omittendi opera tum præcepti tum consilii ad scandalum evitandum?
4. Quodnam judicium a Jacobo ferri debeat?

Solution

1. This question is answered in "Manual of Moral Theology," vol. i, p. 198.

2. See the answer to this in "Manual of Moral Theology," vol. i, p. 199.

3. For the answer to this, see "Manual of Moral Theology," vol. i, p. 200.

4. The case. Bertha, a Catholic governess in a non-Catholic family, tells James her confessor the following facts about her conduct and asks his advice about them: (*a*) She said her Rosary in presence of the other servants before going to bed, although the sight of the Rosary caused them to blaspheme the Blessed Virgin. Bertha can say her Rosary without letting it be seen by the other servants, and she should do this to prevent their blasphemies. (*b*) Often she has told suggestive stories although she foresaw that the other servants would take the occasion to tell really immodest ones. In this Bertha committed the sin of indirect scandal, and its gravity will depend on the gravity of the sins committed by the other servants in telling their immodest stories. (*c*) Coming from church on a Sunday she came by streets frequented by youths of bad character although she often occasioned indecent remarks. It is not suggested that Bertha chose these streets in order to meet the young men. If she can without inconvenience return by some more respectable streets, she should do so. We suppose that there is nothing in Bertha's dress or manner to provoke the remarks, and so the scandal is pharisaic, and she need not put herself to inconvenience to avoid it. She should pay no attention to the objectionable remarks. (*d*) She allowed the children, of whom she had charge, to pilfer small morsels of food in order to catch and correct them. Such an action is not scandal, and so she need not be troubled about it.

6

DENUNCIATION OF OFFENDER

Caius puer, qui in collegio quodam catholico educationis causa degebat, Paulo confessario confitebatur se sollicitatum ab altero puero graviter contra sextum non semel peccasse. Paulus judicabat periculum lapsus futuri non esse exiguum, ac proinde declarabat Caio obligationem gravem nomen complicis præfecto aliive superiori manifestandi, cui obligationi satisfacere renuenti insinuabat sufficere nomen sollicitantis in charta clausa scribere et sibi tradere; quod etiam facere renuentem Caium haud absolutum Paulus dimittebat. Unde quæritur:

1. Quid sit correptio fraterna et qualis ejus obligatio?
2. Quomodo fieri debeat?
3. Num liceat confessario nomen complicis a pœnitentibus exquirere?
4. Quid ad casum?

Solution

1. This question is answered in "Manual of Moral Theology," vol. i, p. 194.

2. The answer to this is given in "Manual of Moral Theology," vol. i, p. 195.

3. May confessors ask from penitents the name of those with whom they have sinned?

In three different constitutions Benedict XIV condemned the practice of asking from penitents the names of those

with whom they have sinned, and imposed severe penalties on those confessors who do this. The constitution *Apostolicæ Sedis* of Pius IX imposed the penalty of excommunication reserved to the Pope on all who teach or defend as being lawful the practice of asking for the name of an accomplice in sin, as it was condemned by Benedict XIV in the Constitutions *Suprema*, July 7, 1745, *Ubi Primum*, June 2, 1746, *Ad Eradicandum*, Sept. 28, 1746. Benedict XIV in those constitutions expressly supposes that there are occasions when it is allowed to ask the name of an accomplice, and the confessor is justified in asking about the circumstances in which a sin was committed with a view to the integrity of confession and fulfilling the duty incumbent on him of prescribing remedies against sin even when such inquiries disclose to him the identity of the accomplice.[1]

4. The case. Caius is under the obligation of taking the necessary means for guarding himself against a relapse; he is bound by the precept of fraternal correction to try to amend his accomplice; and he is under a general obligation of charity to prevent great harm coming to the college in future from the presence of a black sheep among the boys. Practically and ordinarily the only way in which he can fulfil these obligations is to denounce the offender to the authorities. Paul, the confessor, was therefore right so far. He was, however, a little precipitate. He should, first of all, have tried to discover the boy's dispositions with respect to denouncing his accomplice before telling him that he was under a grave obligation to do it. Paul might perhaps have discovered that Caius had some sort of excuse, such as fear of consequences, for not making the denuncia-

[1] St. Alphonsus, lib. vi, nn. 491, 499.

tion, or that he was under the impression that he could not be bound to do such a thing, and then perhaps the confessor might have seen reason not to proceed to extremities with the boy all at once. It is of immediate necessity that Caius should take means to preserve himself from falling again, and giving information to the authorities is not absolutely necessary for that.

7

A POLICE AGENT

Qui paci publicæ Londini invigilant recenter certiores sunt facti de quibusdam falsariis qui tesseras falsas argentarias fabricaverint. Unde Caium quemdam instigarunt ut tesseras istas falsas emeret pro ipsis criminis probandi causa, quod fecit dando quinquaginta shillingos pro unaquaque tessera cujus valor fictus erat quinque libræ sterlinæ. Quod quum Titius et Julius sacerdotes legissent in ephemeridibus publicis de honestate actionis Caii dissentiebant, Titio dicente esse licitam, Julio vero negante, quum nunquam ad malum quemquam incitare liceat. Unde quæritur:

1. Quid sit scandalum et quale peccatum?

2. Quid sit cooperari in peccato alieno et num unquam sit licitum?

3. Quomodo differant occasio et causa peccati alieni, et num alterutram ponere liceat?

4. Quid ad casum?

Solution

1. This question is answered in "Manual of Moral Theology," vol. i, p. 198.

2. This question is answered in "Manual of Moral Theology," vol. i, p. 203.

3. How does an occasion of another's sin differ from a cause of it, and is it lawful to put either?

An occasion of sin is given when something is done which another takes advantage of to commit sin although what was done did not cause the sin either physically or morally.

The occasion may have suggested the sin, but it did not cause it; the sin is wholly due to him who takes advantage of the occasion to do wrong. A cause of sin on the other hand produces it, or effects it, either physically or morally. Thus one who induces another by persuasion to commit theft is the moral cause of his sin; if he merely committed theft himself without saying anything to the other, who thereupon followed his example, the former would be the occasion of the latter's sin.

The case. The London police had information about some forgers of bank notes. In order to be able to convict them they induced Caius to buy some of the forged notes for them at the rate of fifty shillings for each five pound note. When two priests, Titius and Julius, read of this in the papers, they disagreed about the lawfulness of the proceeding. Titius said that it was all right; Julius denied this, on the ground that it is never lawful to incite anyone to do wrong, and this Caius did by inducing the forgers to sell worthless bits of paper for fifty shillings.

Titius was right and Julius was wrong. Caius knew what he was doing and there was nothing wrong in it from his point of view. He was willing to pay fifty shillings in order to get certain evidence of the crime committed by the forgers. For the common good he furnished them with an opportunity of betraying themselves, and they took it. The forgers always had the habitual intention of selling their worthless notes; whenever they did this, they committed sin. But Caius had good reason for furnishing them with an occasion of selling their notes though they committed sin thereby. With this sin Caius only co-operated materially, not formally.[1]

[1] St. Alphonsus, lib. ii, tract. 3, n. 47.

THE DECALOGUE

THE FIRST COMMANDMENT

1

PUBLIC WORSHIP

Albertus sacerdos qui bene cognoscit præscripta ecclesiæ de Litaniis debita auctoritate approbandis dubius est de liceitate quarumdem Litaniarum quæ inveniuntur in libro precum ab episcopis Provinciæ Westmonasteriensis approbato, vulgo *Manual of Prayers*. Idem in parietibus ecclesiæ cujus curam recenter suscepit, imagines martyrum anglorum nondum beatificatorum depictas invenit et infra cum nomine martyris inscriptionem — Martyred — tali die et anno. Dubitat vero utrum debita observantia erga S. Sedem et cura beatificationis istorum martyrum procurandæ exigant ut imagines removeantur. Unde quæritur:

1. Quid sint oratio privata et oratio publica: cultus privatus et cultus publicus?

2. Quid præscribatur circa formulas orationis publicæ? et quid speciatim de Litaniis edendis vel recitandis?

3. Qui cultus beatificatorum et nondum beatificatorum sit licitus?

4. Quid ad casum?

Solution

1. What is public and private prayer, public and private worship?

According to Suarez, in order that prayer may be public

in the technical sense, it is necessary that it be offered by a minister duly appointed by the Church to act in her name, that he should have the intention of fulfilling his office, and that he should use the forms approved by the Church for the purpose. Prayer which has not these conditions is private. There is the same distinction between public and private worship.[1]

2. What is prescribed concerning the forms of public prayer, and what especially about publishing or saying Litanies?

Only those forms must be used in public prayer which are approved for the purpose by the Church. The right of ordering the liturgy belongs to the Pope, whose approbation is required in the Latin Church for the Breviary, Missal, Pontifical, Ceremonial of Bishops, and the Ritual. Bishops may approve forms of prayer for public use outside the strictly liturgical functions of the Church. Only those Litanies may be publicly said in churches and public oratories which are in the Breviary or in the later editions of the Roman Ritual approved by the Holy See, and no others may be printed even for private use without the approbation of the Ordinary.[2]

3. What worship may be paid to beatified saints and to the non-beatified?

Private worship may be paid to such as have died by those who have moral certainty that they are with God. In order that public worship may be paid to them they must at least be beatified by the Pope, and even to the beatified only those signs of worship may be paid which the Church expressly permits in the brief of beatification.

[1] Suarez, De Rel., vol. ii, lib. iii, c. 2, n. 2.
[2] S. R. C., Nov. 28, 1895; Const. Leo XIII, *Officiorum*, n. 19.

4. The case. Albert, a priest, is doubtful about the lawfulness of certain Litanies to be found in the "Manual of Prayers" approved by the English bishops. It follows from what has been said that only the Litanies of the Saints, of the Holy Name, of the Sacred Heart, of the Blessed Virgin, and of St. Joseph, may be said publicly; the other Litanies in the "Manual" may be used for private devotion. Albert finds in his church pictures of English martyrs not yet beatified with the inscription "Martyred" on such a day, in such a year. If the pictures have no signs of religious worship about them, such as an aureole or rays, and they are not placed over the altar, they are permitted. The inscription would only mean that the person represented was put to death for the Faith, but would not be intended to forestall the judgment of the Church on the fact of martyrdom.

2

DOUBT CAST ON AN ANCIENT RELIC

Titius sacerdos et mediocriter doctus scandalizabatur et perplexus erat quum in ephemeridibus legeret plures historiæ scriptores catholicos nunc tenere domum Lauretanam non esse ipsam domum Nazarethanam in qua S. Familia degeret. Quum autem Breviarium Romanum (Dec. 10) declaret: "eamdem ipsam esse in qua Verbum caro factum est et habitavit in nobis, tum pontificiis diplomatibus et celeberrima totius orbis veneratione tum continua miraculorum virtute et cœlestium beneficiorum gratia comprobatur," et Ecclesia cultum istius domus adhuc approbare videatur, Titius nesciebat quomodo hæc sint concilianda. Unde quærit:

1. Qualis cultus ab Ecclesia reliquiis sacris exhibeatur?
2. Num ut cultus religiosus reliquiis præstetur certitudo de reliquiarum veritate requiratur?
3. Num Ecclesiæ approbatio vel etiam miracula efficiant ut omnimoda certitudo de veritate reliquiarum habeatur?
4. Quid ad casum?

Solution

1. What sort of worship is paid by the Church to sacred relics?

The worship which the Church pays to sacred relics is relative, not absolute; that is, relics are honored not on account of any intrinsic holiness of their own, but because of

their connection with a person who is worthy of honor. Special honor is paid to portions of the true Cross because Our Lord died on it for our salvation; relative honor, called *dulia,* is paid to relics of the saints.

2. Is certainty about the authenticity of relics required in order that worship may be paid them?

Yes, moral certainty is required; for religious worship may not be paid to an object which is probably not worthy of such honor. Private certainty of the authenticity of a relic and of the sanctity of the person with whom it is connected is sufficient to justify private worship; for public worship the approbation of the Church is required. A bishop may approve relics of those saints who are canonized or beatified; the Pope alone can approve relics of those who are not canonized nor beatified. The honor which has hitherto been shown to ancient relics from time immemorial should continue to be paid to them even though there be no authentication, unless it becomes certain that they are false.

3. Does the Church's approbation or even miracles make the authenticity of a relic absolutely and irrefragably certain?

No. The Church's approbation is a sufficient guarantee that the authenticity of a relic is morally certain indeed, but it is a question of fact, and new reasons may be discovered which show that what was believed to be true is false. God, too, may work miracles in reward of the dispositions of those who honor a relic which they suppose to be a true one, although it is in reality false. The miracle is a reward of good dispositions, not a divine guarantee of the authenticity of a relic.

4. The case. By what has been said we can soothe the per-

plexity of Titius without entering on the question whether the Holy House at Loreto is really that in which Our Lord lived. Possession is in its favor, and it has not yet been shown not to be the Holy House. The Breviary and the Papal briefs rest on what was deemed satisfactory evidence of the truth of their assertions at the time when they were written. They may stand until they are shown to be mistaken. If that ever comes about, the Church will doubtless recall her sanction, and meanwhile we may go on as before. For the principles involved in this solution see Benedict XIV, De Canon. Sanctorum, lib. iv, pt. ii, c. 13 and c. 24.

3

A DANGEROUS ADVERTISEMENT

Caius juvenis catholicus legit in ephemeride catholica notitiam (*advertisement*) de quodam qui omnes pretium dantes hypnotismum similiaque docere erat paratus. Ad hominem scripsit Caius ejusque librum emit in quo methodus hypnotizandi, scribendi cum *planchette*, etc. describebatur. Curiositatis, recreationis, vel scientiæ acquirendæ causa fratres et sorores hypnotizare, petere nuntios de absentibus amicis a *planchette* incepit. Quem ita occupatum invenit Julius ejus parochus quodam die quum familiam inviseret, et petens unde ista Caius didicisset quæ supra sunt narrata audivit. Unde quæritur:

1. Quid sit divinatio et quænam ejus malitia?
2. Num liceat hypnotismum exercere vel subire?
3. Quid de ephemeride, de Caio, et de Julio in casu?

Solution

1. What is divination and wherein lies its malice?

Divination is the express or tacit invocation of the devil to gain knowledge of the occult. We obtain knowledge lawfully by using natural means or by studying the revelation given by God. If we try to obtain knowledge of occult matters from the devil, we commit sin by associating ourselves with the enemy of God and of ourselves, an enemy who is certain to do us harm, and to whom we offer a sort of

worship by attributing to him knowledge of the occult. Such communication with the devil is specially prohibited in Holy Scripture.[1] By the very fact of employing means which are altogether incapable of themselves to give us the knowledge which we seek, we invite the intervention of the devil and tacitly invoke him.

2. Is it allowed to exercise or to undergo hypnotism?

Experts, for good cause, with proper precautions, may practise hypnotism as the Holy Office answered July 26, 1899. Under similar restrictions, therefore, one may undergo hypnotism. In other circumstances it is not lawful either to practise or to undergo it. It is obvious that it is not lawful for the purpose of divination, but neither is it lawful as a means of recreation, or for the sake of satisfying curiosity. At the lowest it is the induction of an abnormal state in which the nervous system is interfered with by one who is, as we suppose, no expert. Thus it is trifling with a very delicate machine and in a matter which is still mysterious to a great extent. There is considerable danger to morals while one person in a state of unconsciousness is to a great extent in the power of the hypnotizer. A *rapport* is established between the hypnotizer and the subject, which to a greater or less extent puts the latter in the power of the former.

3. The case. From what has been said it is clear that the Catholic newspaper should not have admitted the advertisement offering to teach all who would pay for it how to hypnotize others and write with the *planchette*. Caius did wrong in buying the book, and in practising hypnotism on his sister and automatic writing out of curiosity, or for recreation, or to gain knowledge. He should devote himself

[1] 1 Cor. x. 20; Deut. xviii. 10.

to less objectionable means of gaining knowledge. Julius, the parish priest, who catches them at their game, should warn them and their parents of the danger of meddling with occult matters, and tell them to throw the book and the *planchette* into the fire.

4

THE DIVINING ROD

Caius catholicus terras satis amplas colebat, quæ tamen aqua non abundabant. Quum audiret Marcum ope virgæ divinatoriæ aquam pro aliis sæpius invenisse consulebat Caius confessarium utrum liceret Marcum conducere ut aquam pro se in suo fundo inveniret. Unde quæritur:

1. Quid sit divinatio et unde sit illicita?
2. Num satis certo probari possit aquam naturaliter non inflectere virgam divinatoriam?
3. Quid ad casum?

Solution

1. This question is answered in "Manual of Moral Theology," vol. i, p. 217.

2. Can it be proved for certain that water does not naturally bend the divining rod?

Yes; this can be proved by the application of the fundamental axiom of natural science — the uniformity of nature. If the twig bends at the presence of underground water, it should do so all the more when the water is exposed; yet ordinarily it does not do so. Moreover, the divining rod is used to find not only underground water, but minerals, lost property, and other objects. And when it is being used to find minerals, it does not indicate the presence of underground water, and *vice versa*. Besides, if the divining rod is moved by the water, the movements should take place, no matter who holds it. Conscious or unconscious muscular

movements are capable of causing the bending of the rod, and in many cases have been observed to do so. See Professor Barrett's "Reports on the Divining Rod." [1] Whence we may conclude with Professor Barrett: "Few will dispute the proposition that the motion of the forked twig is due to unconscious muscular action." [2] The rod on this hypothesis is merely an indicator which shows when the diviner is over a supply of underground water. The presence of water is suggested to the diviner according to Professor Barrett "From various hints he has gathered or knowledge he possesses becoming unconsciously operative; or from his subconscious and perhaps hyperæsthetic discernment of the surface signs of underground water or ore; or from some kind of transcendental discernment possessed by his subconscious self." Professor Barrett attributes great importance to the last source of knowledge and thinks "that in years to come we shall see in all these phenomena the manifestation of the transcendental Subject which lies in the background of our being, and remains unrevealed to our self-consciousness." [3] For this pantheistic interpretation of certain rare and extraordinary cases the Catholic theologian will substitute the intervention of preternatural causes.

3. The case. The confessor of Caius will tell him that he may use his own judgment about employing Mark the dowser to find water for him. It is probable at least that divination does not enter into the method of the ordinary dowser, and that he may therefore be employed without sinning against religion.

[1] Proceedings S. P. R., vols. xiii and xv.
[2] Vol. xiii, p. 243.
[3] Vol. xv, pp. 310, 311.

5

HYPNOTISM IN MEDICINE

Arsenius, medicus catholicus, consuevit clientes nervosos vel ebrietati deditos sopire somno hypnotico, ac sopitis varia suggerere remedia in ordine ad eos medendos, imo semel quando a vetere cliente distante litteras acceperat quibus rogatus est utrum medicina præscripta continuaretur vel mutaretur, quum voluisset plura de conditione clientis scire nec potuisset visitare eum, "medium" quod vocant somno hypnotico sopitum consuluit de clientis conditione et responsum veridicum accepit. Audivit tamen Ecclesiam condemnasse omnem usum hypnotismi ac ut tutus esset conscientia confessarium rogavit de liceitate a se factorum. Unde quæritur:

1. Quid dicendum de causa hypnotismi?
2. Num decreta de magnetismo animali applicanda sint hypnotismo?
3. Quid ad casum?

Solution

1. What is to be said about the cause of hypnotism?

The question which concerns us here is whether hypnotism is to be attributed to natural or to preternatural causes. Many of the older theologians expressly attributed it to the devil, whence it followed that Catholics could take no part in it. Others, however, distinguished between the phenomena of hypnotism. The hypnotic sleep itself, anæsthesia,

catalepsy, aptitude for receiving suggestions, somnabulism, and other similar phenomena, they attributed to natural causes, as similar normal or pathological states are familiar. Clairvoyance, knowledge of languages and sciences unknown in the normal state, prediction of the future, and similar phenomena, they attributed to preternatural causes. The Holy Office in its decrees of July 28, 1847, Aug. 4, 1856, July 26, 1899, favored the latter opinion.

2. Are the decrees concerning animal magnetism to be applied to hypnotism?

Yes; the same phenomena which are now grouped under the general name of hypnotism were formerly known by that of mesmerism or animal magnetism. And so the two first of the decrees of the Holy Office which have just been referred to and which expressly mention magnetism may and should be applied to what is now called hypnotism.

3. The case. Arsenius, a Catholic doctor, is accustomed to use hypnotism in the treatment of nervous patients and of those given to drink. It would be well if he were to try other approved remedies first, and to have recourse to hypnotism only in cases where they have failed, and never to hypnotize anyone except in the presence of a third person. Under these conditions Arsenius may continue to use hypnotism for such cases as these. But when he consulted a medium about the state of health of a distant client whom he could not visit in person, he transgressed the limits allowed to a prudent Catholic doctor. Although such acts of clairvoyance are reported they seem to be inexplicable by the forces of nature; examples of mistake and fraud in such cases are frequent, so that it is by no means a safe method of diagnosing a disease. Arsenius therefore did wrong in this respect. The decree of the Holy Office,

dated July 26, 1899, given in answer to a doctor who had consulted it, confirms this solution: "Quoad experimenta jam facta, permitti posse, modo absit periculum superstitionis et scandali, et insuper orator paratus sit stare mandatis S. Sedis et partes theologi non agat. Quoad nova experimenta, si agatur de factis quæ certo naturæ vires prætergrediantur, non licere; sin vero de hoc dubitetur, præmissa protestatione nullam partem haberi velle in factis præternaturalibus, tolerandum, modo absit periculum scandali." Leo XIII approbavit.

6

PERSONAL SACRILEGE

Titius sacerdos et religiosus solemniter professus incidit aliquando in gravia peccata tum interna tum externa contra sextum decalogi præceptum. Dum illa confitetur apud confessarios qui conditionem pœnitentis ignorant, declarando peccata simul dicit nunc tantum se esse sacerdotem quin dicat se esse etiam religiosum, nunc tantum se esse religiosum quin mentionem faciat sacerdotii, nunc se esse religiosum professum, imo semel quamvis peccata gravia interna contra sextum confitetur nihil de conditione dicit. Postea tamen dum auctores probatos consulit, dubitare de integritate suarum confessionum incipit. Unde quæritur:

1. Quid sit sacrilegium?
2. Quæ sit persona sacra?
3. Quibus modis persona sacra violetur peccato sacrilegii?
4. Quid ad casum?

Solution

1. This question is answered in "Manual of Moral Theology," vol. i, p. 226.

2. Who is a sacred person?

A sacred person is one who has been specially consecrated to God by the authority of the Church for a particular purpose, as for the observance of chastity. In the matter of sacrilege the term also signifies one who enjoys the privilege

of personal inviolability, so that by ecclesiastical law those who use violence against him or who convene him before the civil courts contrary to the *privilegium fori* are guilty of sacrilege.

3. In what ways is a sacred person violated by a sin of sacrilege?

Persons who have been consecrated to God for the observance of chastity commit a sin of sacrilege if they violate chastity even in thought. This is *communis et certa doctrina*, says Lehmkuhl.[1] Sacrilege is also committed by using violence against clerics and religious contrary to the *privilegium canonis*, as also by violating the *privilegium fori*, as far as it is still in force. These different ways of committing personal sacrilege probably are not distinct species of the sin; they are merely different acts belonging to the same species of sacrilege, according to St. Thomas.[2]

4. The case. Titius satisfies his obligations by saying that he is a priest, or by saying that he is a Religious, without saying that he is professed. "Probabile est non opus esse exprimere utrum fuerit votum solemne an simplex; sicuti neque si duplici titulo sit sacrata, v.g. quia est sacerdos et religiosus: quia est moraliter una numero malitia."[3]

He does not satisfy the obligation of integrity by confessing internal sins against chastity without saying anything about his condition, or at least that he is under a vow of chastity when the confessor knows nothing about his state of life. Of course if the confessor knows that he is a priest, what he said would suffice.

[1] Vol. i, n. 385. [2] II–II, q. 99, a. 3, ad. 2.
[3] St. Alphonsus, lib. iii, n. 454.

7

DIABOLICAL POSSESSION SCIENTIFICALLY EXPLAINED

Titius putat ope scientiæ modernæ posse phenomena satis explicari quæ hactenus diabolicæ possessioni theologi tribuere solebant. Sic in casu recenti quo monialis quædam vulnera a dæmone inflicta accepisse fertur, Titius phenomenon attribuit vi imaginatrici ipsius monialis; potestatem ejusdem distinguendi inter aquam communem et benedictam, hostiam consecratam et non consecratam, effectum exorcismi, imo scientiam linguarum hactenus prorsus incognitarum, attribuit Titius emanationibus ex cerebris astantium qui istas linguas callebant. Caius agnoscit talia esse signa diabolicæ possessionis communiter admissa non tantum a theologis sed ab Ecclesia in Rituali, unde multum vellet scire utrum explicatio Titii admitti possit. Unde quæritur:

1. Num vere detur possessio diabolica et quibus signis de ea constare possit?

2. Num theoria de telepathia, seu *thought-reading*, admitti possit?

3. Quid ad casum?

Solution

1. Does diabolic possession exist and by what signs may it be known?

Diabolic possession certainly exists, as we know from the

pages of Holy Scripture, and very similar cases have been reported in all times down to the present day. While the Roman Ritual warns priests not to be too ready to believe that anyone is possessed by the devil, it gives the signs by which they may be able to distinguish cases of true possession: "In primis, ne facile credat, aliquem a dæmonio obsessum esse, sed nota habeat ea signa, quibus obsessus dignoscitur ab iis, qui vel atra bile, vel morbo aliquo laborant. Signa autem obsidentis dæmonis sunt: Ignota lingua loqui pluribus verbis, vel loquentem intelligere: distantia et occulta patefacere: vires supra ætatis seu conditionis naturam ostendere: et id genus alia, quæ cum plurima concurrunt majora sunt indicia." — De Exorcizandis Obsessis a Dæmonio.

2. Can the theory of telepathy, or thought transference, be admitted?

Telepathy is the name given to a theory according to which thought may be transmitted from mind to mind through the ether or through other than the ordinary channels of sense. Many claim that the possibility of telepathy has been demonstrated by experiment. Others, however, stoutly deny this. Thus Dr. J. Milne Bramwell writes: "After many years' hypnotic work, and frequent opportunities of investigating the experiments of others, I have seen nothing, absolutely nothing, which might be fairly considered as affording even the slightest evidence for the existence of telepathy, or any of the so-called occult phenomena."[1] Sir Oliver Lodge and others invoke the theory of the subliminal consciousness in order to explain the wonders of hypnotism and spiritism. Dr. Bramwell rejects this and other theories as inadequate to explain the

[1] Hypnotism, p. 142.

facts, and then adds: "As William James truly says, these manifestations of the hidden self are immensely complex and fluctuating things, which we have hardly begun to understand, and concerning which sweeping generalization is sure to be premature." [1]

3. The case. Titius thinks that the phenomena which theologians attribute to diabolical possession may be explained by the help of modern science. Thus in a recent case where a nun was said to have been wounded by the devil, Titius explains the facts by the force of the imagination. Theologians who are worthy of the name ask first for conclusive evidence of such alleged facts. If the wounds or other phenomena are certainly existent, theologians look for a natural explanation first, and only attribute them to the devil when all possible natural causes have been shown to be inadmissible. The nun's wounds may easily have been caused by some more ordinary means than her imagination, or in some special case the explanation of Titius might be the true one. Titius attributes to telepathy the nun's power to distinguish holy from common water, a consecrated from a non-consecrated host, the effect which exorcism produces on her, and her knowledge of languages hitherto unknown by her altogether. In this Titius has gone farther than science warrants. Whether telepathy exists or not in the very modest sense of transferring from mind to mind without the intervention of the senses the number of a playing card, or a geometrical figure, is still doubtful. Even granting that telepathy in this sense is a *vera causa*, the gap from this to the applications of Titius is too wide for science to leap. Caius therefore will reject the explanation of Titius as being unscientific; but at the

[1] Hypnotism, p. 420. 2d ed., 1906.

same time he will bear in mind the caution of the Ritual, which does not say that any one or two phenomena are indubitable signs of diabolical possession, but that when "very many such signs concur, they are surer indications" of diabolical possession.

THE SECOND COMMANDMENT

1

ANGLICAN VOWS

Lucia anglicana emittit tria vota religionis perpetua in congregatione quadam mulierum anglicana dicta Sanctæ Margaretæ. Dum fideliter vota sua observabat libros catholicos legendo paulatim religionem catholicam solam esse veram ei persuasum est. Ecclesiam igitur anglicanam et congregationem sine ulla licentia superiorissæ reliquit et in Ecclesiam catholicam a Julio sacerdote catholico erat recepta. A Julio quærebat utrum et quatenus votis in ecclesia anglicana emissis adhuc teneretur, et quid sibi faciendum si teneretur; qui respondebat eam minime iis teneri utpote ex errore emissis, et etiamsi teneretur se cum ea dispensare ita ut omnino libera maneat. Unde quæritur:

1. Quid sit votum et quatenus ex ignorantia vel errore invalidum?
2. Quæ sit obligatio voti et quomodo hæc cesset?
3. Quinam in votis dispensare valeant?
4. Quid ad casum?

Solution

1. What is a vow and how far is it rendered invalid by ignorance or mistake?

A vow is a promise made to God concerning something which is possible and better than its opposite. Ignorance

and mistake about the substance of the vow, or about some quality of it which is of great importance, makes the vow invalid; ignorance and mistake about accidental qualities of small moment do not invalidate the vow.

2. What is the obligation imposed by a vow and how does it cease?

A vow produces an obligation to perform what was promised to God. This obligation, like that of a law, depends partly on the matter of the vow, partly on the intention of him who takes the vow. If the matter is serious, the obligation will be grave, unless he who made the vow expressly limited the obligation, and willed it to be light. The obligation of a vow ceases intrinsically or extrinsically. It ceases intrinsically if the matter of it becomes impossible, useless, or immoral; if it undergo a change of importance; if the final cause of it cease to exist; and on the non-fulfilment of a condition if the vow was conditional. It ceases extrinsically if it is annulled, dispensed, or commuted by competent authority.

3. Who can dispense vows?

Those who have spiritual jurisdiction in the external forum can for good cause dispense from vows which are not reserved to a higher authority. The Pope, bishops, and Religious superiors can dispense by their ordinary authority; confessors and others who are capable of exercising ecclesiastical jurisdiction, by delegated authority.

4. The case. Lucy, an Anglican, took the perpetual vows of poverty, chastity, and obedience, in an Anglican order of St. Margaret. From reading Catholic books she became convinced that the Catholic Church is the true Church of Christ, left her convent without leave of her superioress, and asked Julius, a Catholic priest, to receive

her into the Church. She further asked Julius whether and how far she was bound by her vows, and he answered that she was not bound at all, because they were taken under mistake, but in any case he said that he would dispense her from them as far as was necessary, so that she might be free.

Julius was wrong in saying that the vows were invalid on account of mistake. Lucy was under mistake about the true Church, but not about her vows, as far as the case allows us to see. She was also in error about the Religious congregation to which she belonged, and if she only took her vows as a member of the order, and conditionally on her remaining in it, they would lapse on her leaving it. But as they were perpetual we must not presume such a condition; they were taken to God independently of the order in which she took them. She had promised God to observe during her life poverty, chastity, and obedience, and we must presume that she knew and intended what she promised. The Anglican Church, however, had no legitimate claim on her, nor had the Anglican sisterhood. Hence they will be private vows, not vows of religion in the strict sense. Julius, as confessor, would usually have faculties to dispense the vows of poverty and obedience; the perpetual vow of chastity is reserved to the Holy See, though special powers are often granted to bishops to dispense in it. If Lucy wants a dispensation from this vow, she may have recourse to the bishop either directly or through her confessor. The S. Pœnitentiaria, Nov. 29, 1842, answered that Vota Protestantis emissa voce et scripto coram ministro anglicado esse vota simplicia et voventem teneri ad observantiam voti si veram habuerit intentionem vovendi.[1]

[1] Collectanea S. C. de P. F., n. 959. 2d ed.

2

A CONFIRMATORY OATH

Titius et Bertha catholici serio mutuas dederunt promissiones de futuro matrimonio ineundo quin illas scripto consignarent quod inutile putabant quum Titius illas juramento confirmaverit. Quæ vero est instabilitas cordis humani paulatim ex familiaritate ipsi utpote sponso Berthæ permissa amorem ardentiorem erga Catharinam Berthæ sororem Titius concepit. Tandem aliquando ita mutatus est ejus animus ut Bertham ferre non posset, quia eam tamquam impedimentum unionis cum Catharina spectabat. Parochus a Titio de sua libertate consultus respondit nullos quidem canonicos effectus promissiones in casu habere, nihilominus eas obligationem naturalem parere quæ obliget in conscientia præsertim quum juramento fuissent confirmatæ. Unde quæritur:

1. Quinam sit effectus legis irritantis quoad actum lege naturali validum?
2. Quid sit juramentum et qualem obligationem inducat?
3. Quid ad casum?

Solution

1. What is the effect of a voiding law on an act which is valid by the law of nature?

The effect of a voiding or annulling law on an act which otherwise would be valid depends very much on the intention of the legislator. Sometimes the legislator merely

intends to deny the right of bringing an action in court to enforce a claim; sometimes the claim is made voidable, not void; sometimes it is made void. What the effect is of any particular voiding law will therefore largely be a question of interpretation.

2. What is an oath, and what sort of obligation does it impose?

An oath is the calling of God to witness to the truth of what we say. It imposes a special obligation out of reverence for God, the God of truth, to tell the truth, or, in a promissory oath, to be faithful to the promise given. A promissory oath is accessory to the promise which it confirms, and must be interpreted according to the nature of that promise. If for any reason the promise was null and void from the beginning, or if it becomes so, the oath, as being accessory, will also cease to bind.

3. The case. Titius and Bertha enter into a verbal engagement to marry, and Titius confirms his promise with an oath. Afterward he falls in love with Catharine, Bertha's sister, and wants to marry her. As now he can not endure Bertha, he asks his parish priest whether he may do as he desires, but he is told that though the verbal engagement with Bertha produced no canonical effects, yet it gave rise to a natural obligation by which he is bound to marry her, especially as the promise was confirmed by oath.

The parish priest was wrong in giving this answer. If that were the effect of the new law *Ne temere*, it would not attain the end intended by the lawgiver —"ut incommodis occurreretur quæ ex sponsalibus, id est, ex mutuis promissionibus futuri matrimonii privatim initis derivantur." Just as clandestine marriage is null and void, so unwritten engagements are null and void by the new law. Therefore

Titius' engagement was null and did not produce any natural obligation, and the oath as being accessory was also void. This, if we look merely at the promise and the oath; for if Bertha will suffer any special damage on account of having relied on the promise and oath of Titius, he will be bound to abstain from damaging her, and if he does not do so, he will be bound in justice to compensate her as far as he can. In certain circumstances he might even be bound to marry her, if that were the only means of saving her from a cruel wrong, not precisely on account of his sworn promise, but because he has no right to deceive others in the reasonable expectations which they have formed from his course of conduct towards them.

3

DISMISSED FROM HIS ORDER

Caius sacerdos olim regularis accessit ad Julium ejusdem Ordinis confessarium cui scrupulos et anxietates conscientiæ pandit. Dixit enim se inquietari de modo quo dimissionem ex Ordine obtinuerit. Nam propter varias difficultates quas est expertus amorem vocationis perdidit, et dimissionem instanter petiit; primo autem superiores eum exhortabantur ut perseveraret, repetitis tamen petitionibus tandem ei dimissionem concesserunt. Per aliquod tempus muneribus sacerdotis secularis incumbebat, et deinde quum putaret se haud tutum esse in conscientia ad Julium olim confratrem convolabat. Unde quæritur:

1. Qualis obligatio ex votis perpetuis religionis oriatur?
2. Quinam possit in votis religionis dispensare et num causa requiratur?
3. Si causa ficta allegetur num dispensatio valeat?
4. Quid ad casum?

Solution

1. What sort of obligation arises from the perpetual vows of religion?

By his vows a Religious binds himself to observe poverty, chastity, and obedience, and moreover to persevere to the end in the observances of religious life according to the rule of his order. These obligations are grave of their own nature, but sins against the vows may be venial from lightness of matter or imperfection of the act.

2. Who can dispense in the vows of religion, and is a cause required for dispensation?

The substantial vows of religion taken in an order approved by the Holy See are reserved to the Holy See, and can only be dispensed by the Pope or by his authority, and for grave and just cause. Such cause is the good of Church or State, or the notable good of the Religious himself.

3. If a fictitious cause is alleged for a dispensation, is this valid?

No; the Pope acts in the name of God to whom the vows are made, and he can not dispense them unless for a sufficient cause. Hence if a false cause is assigned as a reason for dispensation, the dispensation is void.

4. The case. Caius, a regular and a priest, on account of the difficulties he met with in his order, asked for his dismissal. At first his superiors refused his request and urged him to persevere. At last, however, by repeatedly making his request he obtained his dismissal, but after some time he became so uneasy in conscience about the way he had obtained it, that he went to Julius, a confessor of the order which he had left, and consulted him on the matter. Julius will tell Caius that there may have been fault in the determined obstinacy with which he demanded his dismissal. But we must presume that Caius acted in good faith, and did not give fictitious reasons for obtaining his dismissal. On that hypothesis he should be sorry for any fault there may have been on his part, but there is no reason why he should be uneasy about the validity of his dispensation. The difficulties which he experienced, the dissatisfaction which he felt in his state of life, and his great desire to change it, were sufficient reasons to justify his superiors in granting the dispensation, though perhaps Caius should not have asked for it.

4

A DISPENSATION IN THE VOW OF POVERTY

Caius in Belgio natus ordinem religiosum votorum solemnium est ingressus in provincia Anglica cum intentione sese missionibus exteris devovendi. Studiis finitis professionem solemnem emisit et post annum nuntium de morte patris in Belgio ac de legitima parte bonorum paternorum sibi juxta leges Belgicas obveniente accepit. Quum autem regulares in Belgio non obstante voto etiam solemni paupertatis capaces dominii remaneant ex dispensatione pontificia, Caius dubitabat utrum ipse hæreditatem adire posset necne. Unde quæritur:

1. Quid sit votum?
2. Quinam sint voti paupertatis effectus et ex his quinam sint ex natura voti quinam ex lege ecclesiastica?
3. Quomodo compossibilis sit solemnitas voti paupertatis cum capacitate dominii habendi?
4. Quid ad casum?

Solution

1. This question is answered in "Manual of Moral Theology," vol. i, p. 246.

2. What are the effects of the vow of poverty and of these which follow from the nature of the vow, and which follow from positive ecclesiastical law?

By the vow of poverty the Religious makes a voluntary renunciation of temporal goods that have pecuniary value.

It belongs to the essence of such a vow that the Religious should not retain any independent use of such temporal goods, and the unlawfulness of such use independently of the will of the Superior is therefore a necessary effect of the vow of poverty. Ownership of property is not necessarily repugnant to religious poverty, provided that there be no independent use of it. But by ecclesiastical law the solemn vow of poverty makes the Religious incapable of possessing property as his own individually; he becomes civilly dead; individually he can neither own, acquire, or dispose of property that has pecuniary value. As a member of a corporation he remains capable of corporate ownership.

3. How is a solemn vow of poverty compatible with capacity for ownership?

As has just been said, the incapacity for ownership is not a necessary effect of the vow of poverty by itself; it is a creature of positive ecclesiastical law. The whole distinction between solemn and simple vows, and therefore their different effects, are derived from positive law (C. un. de voto et voti redemp. in 6to). Hence if the Pope so wills it, for good reason a Religious may be under a solemn vow of poverty, and yet by special provision he may be capable of owning property, provided that he has not the independent use of it.

4. The case. Caius was born in Belgium, but entered the English province of a Religious order with solemn vows. After his profession he heard that his father was dead and that the legitimate part of his father's property had devolved on him according to Belgian law. Even solemnly professed regulars in Belgium are capable of succeeding personally to such property by dispensation, as Leo XIII

declared, July 31, 1878.[1] Caius doubted whether he could accept his legitim or not. The words of the Pope's decree are: "Omnes singulosque Belgii regulares utriusque sexus etiam qui vota solemnia nuncuparunt prædictos omnes actus (bona acquirere, retinere et administrare, deque iis disponere) valide et licite exercuisse et exercere." However, Caius belongs to the English province of his order, and he can not be called a "Belgii regularis." "Belgii autem regulares videntur esse quotquot asciscuntur in communitatem Belgii," says Fr. Vermeersch.[2] Therefore the legitim of Caius lapses just as if he were dead.

[1] Lehmkuhl, vol. i, n. 524. [2] De Relig. Instit., vol. i, n. 243.

THE THIRD COMMANDMENT

1

HEARING MASS IN A CONVENT

Episcopus quidam permisit ut congregatio quædam monialium novum conventum in quadam civitate erigeret; ne tamen fideles ab unica ecclesia parochiali abessent, noluit permittere ut laici ad Missam audiendam in sacello conventus admitterentur. Aliquando vero esset multo convenientius si hospites et amici conventus qui ad tempus manerent vel intra ipsum conventum vel in domo vicina possent intra conventum præcepto satisfacere, quum ecclesia ultra mille passus distaret. Noluit superiorissa rem referre ad Episcopum, rogabat tamen Paulum sacerdotem qui annua exercitia monialibus tradebat, quid in casu facere liceret. Hic vero rogat:

1. Quænam sint conditiones implendæ ut præcepto de Missa audienda diebus festivis satisfiat?

2. Quænam sint oratoria publica, semi-publica, et privata?

3. Num episcopi derogare possint legi communi Ecclesiæ?

4. Quid ad casum?

Solution

1. What are the conditions to be complied with in order to satisfy the precept of hearing Mass on days of obligation?

The whole of Mass must be heard, in the proper place, with bodily presence, and with attention.[1]

2. What are public, semi-public, and private oratories?

An authentic answer to this question was given by the decree S.R.C., Jan. 23, 1899: "Constat porro oratoria publica ea esse quæ auctoritate Ordinarii ad publicum Dei cultum perpetuo dicata, benedicta vel etiam solemniter consecrata, januam habent in via, vel liberum a publica via Fidelibus universim pandunt ingressum. Privata e contra stricto sensu dicuntur oratoria quæ in privatis ædibus in commodum alicujus personæ vel familiæ ex indulto Sanctæ Sedis erecta sunt. Quæ medium inter hæc duo locum tenent, ut nomen ipsum indicat, oratoria semipublica sunt et vocantur."

3. Can bishops derogate from the common law of the Church?

No; Benedict XIV gives expression to this principle of canon law in several places of his well-known work "De Synodo Diœcesana": "Cuilibet vero compertum est non posse episcopum relaxare legem a superiore latam neque alteri illam licentiam impertiri quam sibimetipsi concedere nequit."[2] "Communes Ecclesiæ leges ritus et consuetudines ubique receptæ ejus dumtaxat auctoritate tolli vel mutari possunt cujus est in universam Ecclesiam auctoritas et potestas: alioquin ingens fieret disciplinæ et hierarchiæ ecclesiasticæ perturbatio."[3] "Non posse hodie episcopum præcipere suis subditis ut se sistant Missæ parochiali, quia non potest delere consuetudinem quæ cum vigeat in toto orbe jam induit naturam Juris communis."[4]

[1] See Manual of Moral Theology, vol. i, p. 258.
[2] Lib. xi, c. 9, n. 5.
[3] Lib. xiii, c. 18, n. 11.
[4] Lib. xi, c. 14, n. 10.

4. The case. A certain bishop allowed a Congregation of nuns to found a convent with a chapel in a certain town, but he forbade them to admit lay people to hear Mass of obligation in their chapel so that the only church in the place might not be deprived of its worshipers. Sometimes the nuns had guests and friends staying either in the convent itself, or in a house in the neighborhood, and as the church is over a mile distant it would be convenient if they could hear Mass in the convent so as to satisfy the precept. The Superioress did not like to refer the matter to the bishop, but she asked the advice of Paul, a priest who was giving a retreat to the nuns, about what was lawful in the circumstances. Paul will know that inasmuch as the common law of the Church allows the faithful to satisfy their obligation of hearing Mass on Sundays and holidays in public and semi-public oratories they can validly fulfil the precept of the Church by hearing Mass in the convent chapel, as it is a semi-public oratory. However, the bishop had a perfect right to make the regulation which is mentioned in the case, and the Superioress should loyally observe it. She may presume that the bishop had no intention of making the guests within the convent go outside to the church to hear Mass, so they may be admitted to hear it in the convent chapel. Friends outside should go to the church, unless there be reason for making an exception in a particular case, and then the Superioress might avoid difficulties by arranging with the parish priest.

2

SERVILE WORK

Caius juvenis catholicus qui arte photographica victum sibi quærit, petit a confessario sacerdote in Anglia missionario utrum sibi liceat photographias diebus infra hebdomadam sumptas diebus dominicis elaborare et perficere. Confessarius censet opus esse servile sed ex paupertate juvenis judicat causam esse dispensandi, dubitat vero, quum ipse sit tantum missionarius coadjutor, utrum dispensationem necessariam concedere valeat necne. Unde quæritur:

1. Qualia opera diebus festivis prohibeantur?
2. Quænam causæ ab ista lege excusent?
3. Quinam in lege dicta dispensare valeant?
4. Quid ad casum?

Solution

1. What sort of work is forbidden on days of obligation?

Servile work, or that which used to be done by slaves, and which is now done by servants and laborers, and which chiefly employs strength of body, is forbidden on days of obligation. Common estimation and custom also have weight in deciding what is servile work. Mental or artistic work, usually done by a higher class of society, is not forbidden. Nor are occupations forbidden which are common to all ranks of society, such as traveling. But besides servile work, public buying and selling, taking oaths, and giving sentence in courts of justice, are also prohibited.[1]

[1] Manual of Moral Theology, vol. i, p. 264.

2. What is sufficient to excuse from that law?

Dispensation granted for just cause by a competent authority, custom, the service of God, charity, necessity, and some utility of importance.[1]

3. Who can grant a dispensation from this law?

The Pope can dispense any or all of the faithful from this law; bishops can dispense their subjects in particular cases, as also can parish priests. This power of dispensing their parishioners in particular cases which custom gives to parish priests may be extended to such priests in England and the United States as have the cure of souls.[2]

4. The case. Caius, a young Catholic, made his living by photography. He asked his confessor whether he could develop on Sundays the photographs taken during the week. His confessor thought that this would be servile work, but he also thought that the young man should be dispensed from the law on account of his poverty. He doubted, however, whether he had power to dispense him, as he was only a curate or assistant priest on a mission.

The confessor judged rightly that developing photographs in the way of business is servile work, and forbidden on Sundays and holidays. However, if the young man belongs to the mission which he serves, the confessor may dispense him, as necessity is a sufficient cause. If the necessity were grave, it would excuse him from the law without a dispensation.

[1] Manual of Moral Theology, vol. i, p. 266. [2] Ibid. p. 267.

3

MASS ON BOARD SHIP

Caius sacerdos et missioni Africæ meridionalis a superioribus destinatus obtinet speciale privilegium Missam in navi durante itinere celebrandi. Vellet tamen certior fieri utrum ipse diebus dominicis ad satisfaciendum præcepto ecclesiastico Missam celebrare, utrum alios catholicos secum forte navigantes de Missa celebranda monere teneatur, ac utrum hi occasionem arripere et Missam audire obligentur. Unde quæritur:

1. Sub quibusnam conditionibus in navi Missam celebrare liceat?
2. Num adsit obligatio utendi privilegio?
3. Quid ad casum?

Solution

1. On what conditions may Mass be said on board ship?

Mass may not be said on board ship without an Apostolic indult, which is granted only on the following conditions: "(*a*) Ut tutum sit navigium ac longe absit a litore; (*b*) ut mare sit tranquillum; (*c*) ut celebranti adsit etiam alter vel sacerdos vel diaconus qui si quis cooriretur motus quo periculum esset ne Calix everteretur possit manu Calicem ab hujusmodi periculo eripere." The S. C. de P. F. brought these conditions to the notice of priests dependent on its authority in an instruction issued March 1, 1902, and added: "Si in navi non habeatur Capella propria vel altare fixum

caveant omnino Missionarii ne locus ad Missæ celebrationem delectus quidquam indecens aut indecorum præseferat: quod certe eveniret si augustissimum Altaris mysterium in cellulis celebraretur pro privatis viatorum usibus destinatis." This, however, must not be understood too literally, as the same Congregation explained to a certain bishop, Aug. 13, 1902: "Decretum tantum respicit abusus . . . non autem absolute celebratio in cellis prohibita est quando adjuncta omnia removeant irreverentiæ pericula."[1]

2. Is there an obligation to use a privilege?

We must distinguish between privileges which are granted to a whole body, like the privilege of the forum granted to clerics, and the privilege of exemption granted to regulars, and privileges granted to individuals, like that of a private oratory. No privileged person is at liberty to forego the first; merely personal privileges of the second kind may be used or not, at the option of the privileged person, unless charity, or some other extrinsic reason, requires their use.

3. The case. Caius, a priest, was going out to the South African missions, and obtained the privilege of saying Mass on board ship. He wanted to know whether he himself was bound to use this privilege on Sundays if he could do so, whether he was bound to tell other Catholics on board that Mass was to be said on Sundays, and whether these were bound to take the opportunity offered of satisfying the precept of hearing Mass. St. Alphonsus (III, n. 319) teaches that one who has the privilege of a private oratory is bound to use the privilege if he can not go to Church, because he is bound to hear Mass on Sundays, if he can do so without serious inconvenience. Other theo-

[1] Mocchegiani, Jurisprudentia Eccles., tom. ii, n. 810 f.

logians, however, with Gury-Ballerini (I, n. 348) deny this, and apply the principle, "No one is bound to use a privilege, as it would then become a burden." The faithful, however, can satisfy the precept of hearing Mass wherever it is said, except in a private oratory, strictly so called, and on a portable altar by special privilege. If there is room in the place where Mass will be said for the Catholics on board, Caius should tell them, though he is not under a strict obligation to do so, as he has not the cure of their souls. Those who know of the opportunity will do well to make use of it if they can do so without serious inconvenience, but they are not under a strict obligation in the matter.

THE FOURTH COMMANDMENT

I

CATHOLIC EDUCATION OF CHILDREN

Titius paterfamilias catholicus filios ad scholam elementarem catholicam mittebat, at quum injuste et crudeliter ut putabat a magistra caederentur et major puerorum pars qui scholam frequentarent ex infima plebe esset, ad scholam auctoritate publica provisam postea eos transtulit. Quo quidem nulla educatio religiosa tradebatur præter lectionem Bibliorum; diebus vero dominicis Titius pueros ad ecclesiam catholicam mittebat ubi doctrina Christiana instituerentur. Paulus Titii parochus frustra eum ad meliorem frugem revocare conatur dubius hæret utrum ei sacramenta denegare debeat, vel quid in casu sit faciendum. Unde quæritur:

1. Quodnam jus insit respective Ecclesiæ et parentibus circa educationem puerorum?

2. Num et qualis sit obligatio parentum mittendi filios ad scholam catholicam si quæ in loco existat?

3. Quandonam pœnitens incapax absolutionis accipiendæ sit censendus?

4. Quid ad casum?

Solution

1. What rights have the Church and parents, respectively, over the education of children?

The Church has received the right and the duty from

God to teach, train, and educate especially, all those who belong to her by Baptism. This right of the Church directly extends to religion, faith, and morals, but as these can not, in practice, be separated from education in other branches, and no attempt should be made to separate them, therefore the Church claims authority over all the education of her children. The parents by natural law have the right and the duty to bring up and educate their children, and in fulfilling this duty, as all others, Catholic parents should follow the guidance of the Church. If parents commit part of their office to others, they are bound to select those who can and will give a Catholic education to their children.

2. What sort of obligation are parents under of sending their children to a Catholic school, if there is one in the place?

The bishops of the Province of Westminster declared, in a circular read Sept. 17, 1905: "We desire to call the earnest attention of all Catholics to the grave departure from Catholic teaching and tradition, and to the very serious dangers to Catholic faith and spirit, which are involved in the placing of Catholic children, of whatever class in life, in non-Catholic schools. Owing to the usually proximate nature of these dangers, it is under ordinary circumstances a grievous sin on the part of parents to expose their children to such risks, and this has been expressly declared in the instructions of the Holy See, and of the bishops of this province. There is not infrequently also a grave sin of scandal. . . . The social advantages to be gained at certain schools manifestly do not constitute such a necessity. No individual priest or confessor is entitled to decide where necessity of this nature exists, but the matter is one to be

referred to the Ordinary of the diocese for his counsel and judgment."

3. When is a penitent to be judged unfit to receive absolution?

A penitent is unfit to receive absolution for his sins if he is not sorry for them, if he has not made, at least, a formally integral confession, and if he is not prepared to fulfil all his duties which impose on him a grave obligation.

4. The case. Titius, a Catholic parent, transferred his children from the Catholic elementary school to the provided school, because, as he thought, they had been unjustly and cruelly beaten by the mistress, and because the greater portion of the children were from the lowest classes. No religious instruction besides Bible reading was given in the provided school. Titius sent his children to the Catholic Church on Sundays where they were taught their catechism. Paul, the parish priest of Titius, having tried in vain to get him to send the children to the Catholic school again, is now in doubt as to whether he should refuse him the sacraments, or what he should do.

Such questions, as to whether and how far Titius was justified in his action or not, have been reserved to the bishops in the Province of Westminster. Paul, therefore, should not take upon himself to refuse the sacraments to Titius, but he should refer the case to the bishop. Objectively it will seldom be advisable to proceed to extremes with people like Titius, unless their example is likely to be imitated by many others if some drastic remedy is not found.

2

A MINOR ENLISTING

Caius juvenis catholicus apud Universitatem Oxoniensem annos viginti natus vult tamquam miles voluntarius bellum pro patria gerere in Africa meridionali. Obstant tamen parentes qui nolunt periculum subire filium primogenitum amittendi quum sit optimæ indolis et nomini honorato gloriæ futurus ampliori. Quum eorum consensum obtinere non possit, flagret tamen ardore patriæ inserviendi accedit ad Julium confessarium et rogat utrum sine peccato mortali nomen militiæ dare possit. Unde quæritur:

1. Quænam sint obligationes filiorum erga parentes?
2. Quænam sint jura parentum in filios?
3. Quandonam obligationes filiorum erga parentes cessent?
4. Quid ad casum?

Solution

1. What are the obligations of children toward their parents?

Children are bound to love, honor, and obey their parents, and support them when they are in need.

2. What are the rights of parents over their children?

As parents have the duty of bringing up and educating their children they have the right, which corresponds to that duty, to keep their children with them, and to receive their obedience, honor, and love. They may correct a child when he requires it. A parent, as such, has no rights over a child's property, but if no guardian of the property

has been lawfully appointed, the father will be considered its guardian, and he will be obliged to administer it for the benefit of his child.

3. When do the obligations of children toward their parents cease?

The obligations of children to love and honor their parents never cease. The obligation to live under their direction and control terminates with minority. In general, minority terminates when the child is twenty-one, but before that age a child who has reached the age of discretion may enter into religion, marry, and enlist in the army.

4. The case. Caius, a young Catholic at Oxford, twenty years of age, wanted to enlist in the army and serve in the South African war. He was the eldest son in a family of position, and the parents would not give their consent. He asked Julius, his confessor, whether he would sin grievously if he enlisted without his parents' consent.

In such cases, the confessor will, as a rule, act prudently by taking the side of the parents, and trying to induce the son to do as they desire. Still, if Caius insists on a theological answer to his question, Julius should tell him that he will not sin if he enlists against his parents' wish. They do not stand in need of his assistance, and English law allows him to enlist without the consent of his parents: "Although parental authority continues until the child is twenty-one, yet public policy requires that a minor should be at liberty to contract an engagement with the State; and the parental authority is suspended, though not destroyed, by enlistment in the army."[1] Thus positive law determines and defines the indefinite and vague law of nature concerning the time of emancipation from parental control.

[1] Encycl. of Laws, vol. v, p. 28.

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3

PATERNAL AUTHORITY LIMITED

Robertus juvenis septemdecim annos natus de obligationibus suis concilium Titii confessarii petit. Recenter enim, ut ait, domum paternam deseruit propter frequentes rixas inter patrem ebriosum et reliquam familiam, nunc vero pater ei ut redeat præcipit, ad obediendum autem nullo modo est Robertus paratus nisi sub gravi teneatur: dicit enim si rediret patrem maximam partem pecuniæ quam labore Robertus acquirat vitio indulgendo dissipaturum, et præterea fore necesse ut rixas aliaque incommoda inter patrem et seipsum vel alterum ex familia toleret, quæ quidem ægerrime et nonnisi compulsum se laturum affirmat. Titius scit Robertum esse morigeratum ac omnia facere paratum quæ catholica religio in casu exigit. Unde quæritur:

1. Quousque liberi sub potestate parentum maneant?
2. Quorumnam bonorum dominium ad filiosfamilias pertineat?
3. Quid ad casum?

Solution

1. How long do children remain under the authority of their parents?

The natural law requires that children should, in general, remain under the authority of their parents until they are able to take care of themselves. The age at which they are able to do this is not determined by the natural law,

but is left to be determined by positive law, ecclesiastical and civil. A child is *sui juris* for the purpose of receiving baptism at seven years of age *per se*, for the purpose of taking vows, or marrying at the age of puberty. By English law, children in general become *sui juris* at twenty-one, but when they have attained years of discretion (regularly fourteen for males, sixteen for females), and separation from their parents appears to be for their advantage, English law will not compel them to remain with their parents.

2. Of what property have children the ownership?

Children, by English law, are capable of owning property just like adults who have attained their majority, but they are limited in the administration of it. The administration is regularly in the hands of a guardian, appointed for the purpose, but a minor can make contracts for necessaries, and necessaries are understood in a wide sense to comprehend whatever is suitable to the minor's position in life.

3. The case. Robert, a youth of seventeen, asked the advice of Titius, his confessor. He left home because of the frequent broils between his drunken father and members of the family, and he is determined not to return unless he is bound under pain of mortal sin to do so. He knows that if he does return, his father will take the largest part of his wages, and spend it in drink, and that he will have to put up with the constant family broils, and this he is not prepared to do. Titius knows that Robert is steady and will do what a good Catholic is bound to do. The confessor, as a rule in such cases, will try his best to keep youths at home till they marry or attain their majority. Still he can not tell Robert that he is bound to return home under pain of committing mortal sin. He is steady, we must

presume that he is in respectable lodgings, he can support himself, and he is not bound to give his wages to his father, to be spent in drink. Under such circumstances Titius should give Robert some good advice about keeping steady and attending to his religious duties, but he should also tell him frankly that he is not bound to return home in the circumstances.

4

PROPERTY RIGHTS OF MARRIED PEOPLE

Martha in confessione accusat se furandi pecuniam mariti, et confessario interroganti de circumstantiis, respondit maritum labore suo summam viginti shillingorum singulis hebdomadis lucrari, sibi vero nonnisi decem dare ad expensas familiæ solvendas, qui vix aut ne vix quidem ad illud sufficiant, alios vero decem bibendo cum sociis pravis dissipare: porro se consuevisse tres vel quatuor shillingos clam e vestibus mariti surripere, ac propterea conscientiam torqueri eo magis quia fere centum libras sterlinas pecuniam propriam possideat, quam tamen velle conservandam ad filias dotandas dicit. Unde quæritur:

1. Num jure nostro maritus acquirat jus aliquod in bona uxoris?

2. Num ex justitia stricte dicta uxori et liberis debeatur a marito sustentatio?

3. Quid ad casum?

Solution

1. Does a husband, by English law, acquire any rights in the property of his wife?

No, not by the simple fact of marriage and during the wife's life. He may acquire rights in virtue of marriage settlements voluntarily entered into; and in case the wife dies intestate the husband is entitled to hold, for his life, all the lands and tenements of which he and she were seised

in deed in her right, for an estate of inheritance, and after taking out administration he becomes entitled to her chattels, personal as well as real.[1]

2. Is the husband bound to support his wife and children in justice, strictly so called?

Yes; this duty is laid upon him by the natural law, and by the law of the land, and when he marries his wife he undertakes to fulfil all his obligations towards her, and thus he is bound in justice by his contract to support her and her children, as well as by the Fourth Commandment.[2]

3. The case. There is no reason why Martha's conscience should be disturbed at what she does. If she cannot otherwise get what is necessary to support herself and her children, she has a perfect right to take it as she does, unknown to her husband. Nor need she be disturbed about her £100. She may keep it intact so that she may be able to give a small dowry to her daughters on their marriage, as long as the husband's wages are sufficient to support her and the family. She is not bound to spend her little hoard in order that her husband may have more to spend in drink.

[1] Manual of Moral Theology, vol. i, p. 355. [2] Ibid. p. 288.

5

CATHOLICS AT NON-CATHOLIC SECONDARY SCHOOLS

Caius mercator catholicus in magna quadam Angliæ civitate mittit filium quotidie ad scholam acatholicam vicinam. Adest quidem catholica schola æque fere vicina in qua æque fere bona educatio in litteris et scientiis haberi potest, ut felix successus in examinibus publicis testatur, ad quam tamen Caius quamvis a Julio parocho rogatus mittere filium non vult, eo quod acatholica schola clarior sit fama et nomine, tum etiam numero ac conditione alumnorum celebrior. Hisce in circumstantiis Julius dubitat utrum Caium a sacramentis Ecclesiæ arcere debeat. Unde quæritur:

1. Quænam sint obligationes parentum erga filios?

2. Qualem potestatem habeat Ecclesia circa educationem fidelium et undenam eam habeat?

3. Quid doceat Ecclesia de educatione in scholis non-catholicis vel mixtis seu neutris?

4. Quid ad casum?

Solution

1. See answer to this question in "Manual of Moral Theology," vol. i, p. 274.

2. See this question answered *supra*, p. 212.

3. What does the Church teach about education in non-Catholic or neutral schools?

The Church teaches that such education is in the highest degree dangerous to faith and morals; that, as a rule, it is gravely sinful to send a child to such schools for education, and that only necessity can make it lawful, provided always that the dangers be made remote and the defective religious training otherwise supplied. The declaration of the English bishops, Sept. 17, 1905, was given above, p. 213. In answer to a question put by Cardinal Vaughan concerning secondary non-Catholic schools in England, the Sacred Congregation of Propaganda, Jan. 23, 1899, wrote: "The frequentation of public schools of this kind can not be without a grave danger to faith and morals, or be held consistent with the use of those means which the Church properly prescribes for the sanctification of souls; and that therefore an obligation is incumbent on Catholic parents, not to expose their sons to this grave danger." See "Tablet," June 22, 1901, p. 991. Other declarations of the Holy See and of the bishops are given in IV Conc. Westmon. d. 17, and in the Third Plenary Council of Baltimore, pp. 99, 279.

4. The case. Caius, a Catholic merchant of a large city in England, sent his son to a non-Catholic day school, though there was an equally good Catholic school as near. Julius, his parish priest, asked him why he did not send his son to the Catholic school. Caius answered that the non-Catholic school had a better reputation and that the number and standing of the boys were higher. These reasons do not justify Caius in his action, all the less because it may give scandal to others. But as was said above (p. 214) Julius should not deny him the sacraments without consulting the bishop.

6

NOT A LIVING WAGE

Albertus juvenis Germanus venit Londinum ubi officium scribæ in magna quadam mercatoria domo obtinuit. Quum vero nec linguam anglicam nec munera exercenda satis calleret ea conditione recipiebatur ut salario viginti librarum pro singulis annis esset contentus. Post unum alterumve annum experientia anglici negotiationis modi ditatus in patriam redire intendebat, unde conditionem acceptabat. Interim tamen angustiis magnis aliquando pressus quum viginti libræ nullo modo suffecerint ad eum sustentandum, consilium et auxilium a quodam sacerdote catholico petiit, qui dubitavit an Albertus non posset aliquid plus nomine justi salarii etiam clam surripere. Unde quæritur:

1. Quænam sint obligationes mutuæ dominorum et opificum?
2. Quid sit justum salarium?
3. Quid ad casum?

Solution

1. This question is answered in "Manual of Moral Theology," vol. i, p. 289.

2. What is a just wage?

This question may be answered in the words of Leo XIII, who in his "Encyclical on the Condition of the Working Classes," May 15, 1891, says: "Let it be then taken for

granted that workman and employer should, as a rule, make free agreements, and, in particular, should agree freely as to the wages; nevertheless, there underlies a dictate of nature more imperious and more ancient than any bargain between man and man, namely, that the remuneration must be sufficient to support the wage-earner in reasonable and frugal comfort. If, through necessity or fear of a worse evil, the workman accept harder conditions because an employer or contractor will afford him no better, he is made the victim of force and injustice."

3. The case. Albert, a young German, came to London and obtained a post as clerk in a merchant's office. As he knew English very imperfectly and was new at his duties, a salary of £20 a year was offered him. He intended to learn the English method of business, and, in a year or two, go back to Germany, so he accepted the terms. He soon found that he had not enough to live on, and sought the advice and help of a Catholic priest, who doubted whether Albert might not secretly take something more than £20 to make up a living wage.

No; Albert will not be justified in occultly compensating himself and taking in secret more than he agreed to take. He was in reality only an apprentice at the post, his work was not worth more than £20 a year, and the experience he gained made up for what might have been wanting in the amount of his salary. The general rule laid down by Leo XIII does not apply to special cases like this. Albert should get assistance from home, or in some other way; he is not the victim of injustice, and he can not resort to occult compensation.

THE FIFTH COMMANDMENT

1

UNLAWFUL PRECAUTIONS

Caia uxor Caii et infirma valetudine audivit a medico tempore partus proximam prolem valde probabiliter morti ipsi futuram. Hinc in angustiis posita est, nam non vult marito debitum negare, at si illud concedat mortem sibi inferet. Vadit igitur ad medicum non optimæ sane famæ et emit medicinam qua singulis mensibus semel sumpta reddetur secura, ut ait medicus, a periculo prolis futuræ. Eventus e sua sententia felix comprobat medici scientiam, attamen etiam scrupulos Caiæ injicit utrum sit licitum talem medicinam sumere, ad quos solvendos confessarium adit. Unde quæritur:

1. Quomodo distinguatur directa et indirecta hominis occisio? et num liceat occidere innocentem?

2. In casu quo aut mater aut fœtus aut uterque certo sit periturus num unquam liceat abortum procurare? etiam fœtus inanimati?

3. Quid ad casum?

Solution

1. How is direct distinguished from indirect homicide, and is it ever allowable to kill the innocent?

Homicide is direct when it is intended, and it may be intended either explicitly or implicitly. It is intended

explicitly when the homicide wishes to cause death; it is intended implicitly when an action is intentionally put which can not but cause death. Thus one would directly cause death who kept another under water for some time, though his primary intention might have been not to kill him, but to prevent him from calling out. On the other hand, homicide is indirect when it is not intended, though it is foreseen that it will follow from some act which is put for another purpose. It is never allowed to kill the innocent directly; it is allowed to do so indirectly, for a great and proportionate cause.

2. In a case where either the mother or the fetus, or both, must necessarily perish, is it allowable to procure abortion at least, if the fetus has as yet no soul?

Following the common opinion, we may put aside, as antiquated, the hypothesis of a living fetus not yet informed by a human soul. The human soul is infused into the fetus at the moment of conception, according to the common opinion. The answer, then, to the question proposed will be that it is never allowed to procure abortion of the immature fetus directly, since it is never allowed to kill the innocent directly. If the fetus, though not quite mature, may probably be saved, as it may be after about the seventh month or even earlier, by artificial means, it will be lawful to bring it to the birth for a reason grave in proportion to the danger incurred. Indirect abortion, like indirect killing of the innocent, is allowable for a sufficiently grave reason.

3. The case. Caia did wrong in taking medicine to prevent having another child. If the medicine acted so as to prevent conception, she sinned mortally; for as St. Alphonsus teaches (III, n. 394): "Nunquam licitum est

matri ob quodcumque periculum sumere potionem ad conceptionem impediendam." If the medicine acted on the fetus after conception, Caia was guilty of infanticide. Her confessor should tell her that she is justified in refusing her husband, supposing the danger to life to be real, but that she may also allow him marital rights and commit herself to God's providence. The latter course may be adopted with greater security than the advice of some doctors would lead one to suppose.[1]

[1] See Génicot, Theol. Mor., vol. ii, nn. 551, 553.

2

MEDICAL ABORTION

Caia materfamilias catholica et jam a quatuor mensibus gravida vomitu quasi continuo laborabat. Medicus ad eam accersitus declarabat remedium vomitus indicatum esse abortum, quem nisi procuraret ipsam cum fœtu infra unum alterumve mensem certo certius morituram. Si tempestive abortus procuraretur fœtus baptizari posset, ipsaque mater valde probabiliter esset salva. Caia a confessario petiit utrum in dictis circumstantiis abortum facere posset. Unde quæritur:

1. Quibusnam præcipue argumentis licitum esse abortum ad matrem salvandam defendatur?

2. Quomodo abortum semper esse intrinsece malum probetur?

3. Quid ad casum?

Solution

1. What were the chief arguments by which it was argued that abortion is allowed in order to save the mother's life?

We are not concerned here with the arguments used by materialists, who look upon the child before birth as a portion of the mother which may be destroyed if it threatens her life, and see no difficulty in killing one in order that the other's life may be preserved when both can not be saved. We are only concerned with theologians, some of whom

thought that in such cases as we are now discussing medical abortion may be permitted. They defended this view on the following grounds: Abortion is usually caused by puncturing the membranes, and this may be done to relieve the mother when pregnancy is threatening her life, though the puncturing also causes abortion and the consequent death of the fetus. In a collision between the right to life of the mother and that of the fetus, the fetus may be said to cede its right in favor of the mother, especially as otherwise both would perish, and the fetus would not be baptized; whereas if aborted, it can be baptized.

2. How is it shown that abortion is always intrinsically wrong?

Direct abortion is always intrinsically wrong because it is direct killing of the innocent. For to cause abortion is to deprive the fetus of the medium in which alone its life can be preserved, which is to kill it directly just as much as thrusting a man under water or into a chamber exhausted of oxygen is killing him directly. As, then, the puncturing of the membranes is the direct killing of the fetus, it is not allowable, even when necessary to save the life of the mother; for evil may not be done that good may come. Nor can the fetus renounce its right to life in favor of the mother, and permit itself to be killed directly; for not man but God alone is the Lord of life and death. In a collision of rights the owner of the better right takes something to himself which is his; his better right gives him no title to take away that which is another's, and so collision of rights can not be applied to justify direct abortion; it takes away the life of the innocent victim.

3. The case. From what has been said it is clear that Caia may not consent to abortion, as the fetus is not

viable. She must ask the doctor to prescribe some other remedy or palliative which will at least save her conscience if not her life. This solution is confirmed by the decree of the Holy Office, July 24, 1895, which declared that such medical abortion as is described in this case is not lawful.[1]

[1] See Lehmkuhl, Theol. Mor., vol. i., n. 844, ed. 9.

3

MUTILATION UNLAWFUL

Anna catholica et conjugata propter deformitatem corporis prolem naturali via edere non valet. Unde prima per craniotomiam fuit extracta, altera per operationem cæsariam viva fuit edita, tertia post breve temporis spatium in lucem prodibit, quam chirurgus extrahere et simul impedire pericula futura vult per operationem quæ a Porro vel Tait-Porro vocatur, qua infans cum utero et annexis sectione abdominali removetur. Anna proinde confessarium consulit utrum dictam operationem subire liceat an oporteat. Unde quæritur:

1. Num mater vitam temporalem perdere ad salutem æternam proli procurandam teneatur?
2. Num hominis mutilatio sit licita?
3. Num Anna vitam maritalem licite agat?
4. Quid ad casum?

Solution

1. Is a mother bound to give her life for the eternal salvation of her child?

Yes; *per se* it is a general rule of charity that we must be prepared to sacrifice our temporal life for the eternal salvation of our neighbor, as St. John teaches: "We ought to lay down our lives for the brethren." [1] This obligation, however, does not arise frequently, because in ordinary

[1] 1 John iii. 16.

circumstances the necessity for doing so is not certain, nor is the expected result certain.

2. Is it lawful to mutilate a man?

No; except in so far as it is necessary to preserve the man's life, or unless it is commanded by competent authority in punishment of crime, according to the law of the country. Otherwise as man is not the owner of his life or limbs, but the ownership of them belongs to God, man can not dispose of life or limb, because he can not dispose of what does not belong to him.

3. Does Ann lawfully lead a married life?

As she cannot bring forth children in the ordinary way it would have been better if she had never married, and even now that she is married it would be better if, by mutual consent, husband and wife abstained from marital intercourse. However, there is no strict obligation to abstain, as if children are conceived, they can absolutely be delivered either by Cesarian section, or perhaps after the seventh month by bringing on premature labor, without killing either mother or child.

4. The case. The operation of craniotomy on the first child was unlawful if the child were alive, for it is the direct killing of the innocent. Cesarian section, of course, is lawful in such cases of necessity. The operation called Tait-Porro is also lawful if it is necessary in order to save the mother's life, "dummodo et fœtus et matris vitæ, quantum fieri potest, serio et opportune provideatur." If it is not necessary, and if ordinary Cesarian section would suffice, then it is unwarrantable mutilation of a human being.

4

ECTOPIC GESTATION

Titius juvenis medicus catholicus rogabat Paulum confessarium utrum tuto sequi posset doctrinam in scholis medicalibus communiter traditam de modo tractandi fœtus ectopicos. Aliquando enim fœtus extra uterum concipitur et crescere incipit, nec semper a tumore distingui potest. Incrementum vero ejus periculum grave matri constituit præsertim quando involucrum rumpitur. Ex doctrina in scholis medicalibus tradita fluidum electricum in cystim immittitur et sic fœtus siquis insit vita privatur, crescere cessat, et matris vita salvatur. Titius igitur volebat scire utrum ita agere liceat, ac si non liceat quid fieri debeat quando vita matris periclitetur tumore qui probabiliter sit fœtus ectopicus, vel qui certo sit fœtus ectopicus. Unde Paulus quærit:

1. Quid sit fœtus ectopicus et quare sit periculosus?
2. Quomodo distinguatur occisio hominis directa et indirecta, et quandonam sit licita?
3. Quid ad casum?

Solution

1. What is an ectopic fetus and why is it dangerous?

The proper place for the fecundated ovulum to settle and grow to maturity is the uterus, but sometimes it remains in the ovaries, sometimes in the Fallopian tubes, sometimes it falls into the abdominal cavity, and in these cases it is

called ectopic or extrauterine. An ectopic fetus can not be delivered in the ordinary way, and its growth becomes a serious danger to the life of the mother, chiefly on account of blood vessels being ruptured in the mother's body by the continual growth of the ectopic fetus.

2. The first part of this question is answered above, p. 226.

Direct homicide is lawful by public authority in punishment of crime, or in a just war, and by private authority in self-defence. Indirect homicide may be permitted for some object of great importance.

3. The case. It is obvious that if an ectopic fetus is living, it will be direct and unlawful homicide to kill it with electricity. If it is uncertain whether a cause of danger to a woman is an ectopic fetus, or a tumor, or some other growth, laparotomy may be performed and the cause of danger removed as soon as the danger becomes imminent. For in that case the certain danger of the woman must be considered and guarded against in preference to the danger to the life of a fetus which is only probable and perhaps nonexistent. Even when the danger certainly comes from the presence of an ectopic fetus, the same operation may probably be performed when its growth causes the danger to the mother to be imminent and the fetus is already viable.[1]

On the other hand, when abortion is procured directly, the fetus is killed directly, and this is never lawful.

[1] See Antonelli, Medicina pastoralis, vol. i., n. 338; Lehmkuhl, Theol. Mor., vol. i., n. 1011, ed. 11.

THE SIXTH COMMANDMENT

1

LECTIO PERICULOSA

Titia temperamento valde nervoso confessa est se sæpius graves motus contra castitatem esse passam. Interroganti confessario utrum essent voluntarii Titia respondit se pravæ delectationi minime consensisse attamen causam iisdem dedisse legendo libros romanticos leviter pravos nec oculos refrenando quin animalia coeuntia aspiceret. Confessarius dubitat utrum Titia graviter peccaverit, utrum numerum ac speciem infimam peccatorum istorum declarare, et a similibus sub pœna denegatæ absolutionis in futurum abstinere teneatur. Unde quæritur:

1. Quid sit luxuria et in quo consistat ejus malitia?
2. Num detur parvitas materiæ in peccatis luxuriæ?
3. Unde mensuranda malitia peccatorum quæ in causa tantum sint voluntaria?
4. Quid ad casum?

Solution

1. Quid sit luxuria et in quo consistat ejus malitia?

Luxuria est inordinatus appetitus venereorum. Venerea autem ordinata sunt ad prolis generationem quæ unice in matrimonio fieri debet. Hinc omnis usus venereorum qui fit extra matrimonium vel in matrimonio sed contra ejus leges est inordinatus et peccaminosus.

2. Num detur parvitas materiæ in peccatis luxuriæ?

Luxuria directe quæsita vel admissa est graviter illicita nec admittit parvitatem materiæ. Luxuria vero indirecta admittit parvitatem materiæ.

3. Unde mensuranda malitia peccatorum quæ in causa tantum sint voluntaria?

Malitia peccatorum quæ in causa tantum sunt voluntaria habent malitiam istius causæ, nam eatenus sunt mala formaliter quatenus sunt voluntaria, voluntaria autem sunt tantum in causa ex hypothesi.

4. Quid ad casum?

Titia sæpius graves motus contra castitatem est passa ex lectione librorum romanticorum leviter pravorum, et ex aspectu animalium cocuntium. Quibus tamen motibus non consensit, et supponitur Titiam non indulsisse lectioni et aspectibus ut motus istos pravos sibi procuraret. Confessarius dubitabat utrum graviter Titia peccasset necne. Non constat Titiam graviter peccasse quia motus impudici tantum in causa fuerunt voluntarii, causæ vero fuerunt tantum leviter pravæ, unde leviter tantum Titia peccavit. Unde non tenetur in confessione numerum ac speciem infimam declarare, nec a similibus sub pœna denegatæ absolutionis in futurum abstinere. Nec periculo proximo graviter peccandi se exposuit Titia, quatenus quamvis sæpius tentata nunquam graviter est lapsa. Omnino tamen hortanda est et sub levi tenetur a talibus actionibus abstinere, præsertim quum in luxuria levis indulgentia ad graves excessus facile declinet.[1]

[1] Bucceroni, Theol. Mor., vol. i, nn. 37, 40, 822.

2

LECTIO LIBRORUM ROMANTICORUM

Caia puella sexdecim annorum solet legere libros romanticos qui licet pravi non sint, in amoribus tamen describendis valde sunt prolixi. Solent inter legendum pravæ cogitationes imo et motus carnales impudici oriri, attamen plerumque iis non consentit, quamvis legere pergit quia aliæ puellæ tales libros legant et tempus terere velit. Semel vero vel iterum delectationi ex pravis motibus ortæ consensit, ac semel peccavit se impudice tangendo, quæ peccata postea est confessa dicendo bis vel ter se immodestam delectationem sibi procurasse quin quidquam aliud addat. Unde quæritur:

1. Num admittendum sit veniale peccatum ex materiæ parvitate in re venerea?

2. Num teneatur quis evitare causam pravorum motuum?

3. Num tactus et aspectus impudici specie distinguantur inter se et ab actibus luxuriæ consummatis?

4. Quid ad casum?

Solution

1. Num admittendum sit veniale peccatum ex materiæ parvitate in re venerea?

Non, si delectatio venerea directe quæratur vel admittatur, ut dictum est supra, p. 237.

2. Num teneatur quis evitare causam pravorum motuum?

Supponitur iis motibus non dari consensum. Si causa

per accidens pravos motus producit et est utilis nec inhonesta in se, tunc non datur obligatio ad talem causam evitandam. Si vero sit causa leviter inhonesta in genere luxuriæ, est sub veniali evitanda; si graviter inhonesta sit in eodem genere, est sub gravi evitanda, nisi sit justa et proportionata ratio honesta ad causam illam ponendam.

3. Num tactus et aspectus impudici specie distinguantur inter se et ab actibus luxuriæ consummatis?

Isti actus imperfecti sunt certe ab actibus perfectis et consummatis distincti, sicut ædificium inceptum ab eodem completo distinguitur. Utrum, iidem actus imperfecti inter se in genere luxuriæ distinguantur controvertitur. Plures affirmant, eo quod objecta eorum actuum sint diversa ac ipsi actus a diversis facultatibus procedant. Alii vero cum S. Thoma negant eo quod actus isti non præcise in se sint mali, sed ratione delectationis pravæ quæ ex illis oriatur. Quæ vero delectatio eadem est ex omnibus actibus illis orta. Unde etiam actus quatenus mali in genere luxuriæ habent eamdem specificam malitiam.[1]

4. Quid ad casum?

Lectio cui indulget Caia non est prava nec est occasio proxima peccati ex hypothesi, unde quamvis pravas cogitationes pravosque motus producere in Caia soleat, non stricte sub peccato eam evitare tenetur. Ex consilio tamen parce tali lectioni indulgendum est, quippe quum plurimi alii sint libri utiliores nec eidem periculo obnoxii, et ad ingenium colendum magis apti. Satisfecit vero Caia saltem probabiliter modo quo peccata non consummata luxuriæ est confessa juxta superius dicta.

[1] Bucceroni, Theol. Mor., vol. i, n. 783.

3

VISITATIONES SPONSORUM

Albertus juvenis catholicus venit ad confessionem et explicat se esse cum Bertha pariter catholica sponsatum. Quam sæpe invisere et non raro tunc peccare malis cogitationibus et desideriis; imo ter vel quater intra hebdomadam solum cum sola ambulare consuevisse quum eam osculari, amplecti, et aliquoties turpiter tangere sibi contigisse fatetur. Interroganti confessario ulterius explicat hæc eodem fere modo per annum usuvenisse. Confessarius in maximis angustiis versatur quid denique sit faciendum, utrum debeat ipsas visitationes prohibere, vel num aliquod consilium dare sufficiat. Unde quæritur:

1. Num levitas materiæ admittenda sit in peccatis luxuriæ?

2. Num eadem regula quoad illiceitatem actionum valeat quoad sponsos de futuro ac quoad solutos in materia luxuriæ?

3. Quid ad casum?

Solution

1. Vide responsum huic quæstioni supra, p. 237.

2. Num eadem regula quoad illiceitatem actionum in materia luxuriæ valeat quoad sponsos de futuro ac quoad solutos?

Sponsi de futuro quatenus nondum matrimonio juncti nullam habent jus ad delectationem veneream ac proinde

ab ea est ipsis abstinendum ac ab iis actibus qui delectationi venereæ sunt proximæ occasioni sicut ab iisdem est solutis abstinendum. Attamen sunt in via ad matrimonium quæ conditio dat jus ad media honesta quibus mutuus amor fovetur ac manifestatur. Hinc visitationes, colloquia, litteræ, necnon oscula juxta consuetudinem loci honestam, aliaque signa mutui amoris sponsis de futuro permittuntur. Quæ signa si in casu particulari sint occasiones proximæ peccati, conandum est ut adhibitis remediis fiant remotæ, et ut matrimonium quantocius ineatur.

3. Quid ad casum?

Albertus solet peccare cogitationibus ac desideriis quando visitat sponsam Bertham. Ter vel quater intra hebdomadam solet solus cum sola ambulare ac tunc eam osculari, amplecti, et aliquoties turpiter tangere. Quæ fere per annum usuvenerunt.

Confessarius debet primo urgere pœnitentem ut matrimonium quantocius ineatur. Interim ab actibus prorsus illicitis sicut a tactibus impudicis a malis cogitationibus ac desideriis est abstinendum. Visitationes ac colloquia confessarius interdicere non valet. Ambulationes solius cum sola dummodo fiant in viis publicis vel cum socia Berthæ adjuncta possent tolerari propter consuetudinem et propter difficultatem fere insuperabilem eas abrumpendi. Monendus Albertus est ut cum reverentia tractet Bertham sponsam si eandem uxorem experiri velit fidelem.

THE SEVENTH COMMANDMENT — JUSTICE AND INJUSTICE

1

AN INGENIOUS VERGER

Titius cujusdam ecclesiæ custos sedilia pro parocho fidelibus locat. Caia conduxerat unum e primariis quæ tamen tempus æstivum in regionibus longinquis transigebat. Juxta consuetudinem alii fideles sedile Caiæ ea absente occupabant. Venit ad Titium Julia sedile quærens conducendum tempore æstivo, qui negabat ullum esse vacuum præter sedile Caiæ quod habere posset, Caia absente, quarta parte totius pretii annualis soluta, et quin Juliæ nomen loco Caiæ poneretur. Pecuniam a Julia solutam retinuit sibi Titius fructum industriæ, ut ait. Parochus vero quum per accidens Titii transactionem detexisset, quæstionem theologicam proposuit utrum juste egisset. Unde quæritur:

1. Quid sit jus quod objectum justitiæ commutativæ constituat?

2. Quomodo distinguantur fructus rei, et ad quem et quo jure pertineant?

3. Quænam sint bona ecclesiastica, et num inter ea sint oblationes fidelium recensendæ?

4. Quid ad casum?

Solution

1. What is a *right* which constitutes the object of commutative justice?

A right is a moral power of having, doing, or exacting something.[1]

2. How are the fruits of property distinguished, and to whom and by what right do they belong?

Fruits of property are natural, industrial, mixed, and civil. Natural fruits of the soil, for instance, due alone to its natural fertility, belong to the owner of the soil. Industrial fruits, due to man's labor, belong to the laborer. Mixed, or partly natural, partly industrial, should be divided equitably between the laborer and the owner of the soil or other property which produces the fruits. Civil fruits, such as rent and interest, belong to the owner of the property rented or borrowed. These rules follow from the nature of the right of property, and so they belong to the natural law.[2]

3. What is ecclesiastical property, and are the offerings of the faithful ecclesiastical property?

Property which belongs to the Church, or to a religious corporation, or to a pious institute founded by ecclesiastical authority, is called ecclesiastical property. The private property of clerics is not ecclesiastical property. Whether the offerings of the faithful are ecclesiastical property or the private property of the clergy depends partly on the intention of the donors, partly on Church law, which for Britain and the United States of America is contained in the Second Council of Westminster, d. 8, according to the constitution of Leo XIII, *Romanos Pontifices*, May 8, 1881.[3]

4. The case. Titius, the verger of a certain church, let out the seats to the faithful for the parish priest. Caia hired one of the first, but as she was absent in the summer

[1] Manual of Moral Theology, vol. i, p. 343.
[2] Ibid., pp. 374, 401.
[3] Ibid., p. 363.

months her seat in her absence used to be given to others. Julia wanted to hire a seat for the summer months and Titius let to her Caia's on condition that Caia's name was not removed and that Julia paid what was equal to a fourth part of the annual rent of the seat. Titius kept this sum for himself as the fruit of his industry.

Titius has no right to the money, and he should hand it over to the parish priest. According to the Second Council of Westminster, bench rents form a part of the property of the Church, and so whatever Caia's seat brought in either from Caia herself, or from Julia, or from anybody else, was Church property, and could not be appropriated by Titius without sacrilege.

2

BOYCOTTING

Julius qui studio theologiæ moralis incumbit recenter legit in quadam ephemeride articulum qui liceitatem actionis dictæ "boycotting" defendere videtur ad prohibendum quominus alius conducat agros quibus a locatore prior conductor esset expulsus. Qui enim applicant "boycott" in casu nihil violentum faciunt, singuli quidem ex conspiratione ab omni societate abstinent præterquam in casu extremæ necessitatis cum iis qui agros conducunt in quo modo agendi nihil deprehenditur quod non sit concessum medicis et aliis qui non coutuntur fratribus qui regulas professionis non observent. Unde quæritur:

1. Quid sit jus, et quomodo jura dividantur?

2. Quodnam sit juris fundamentum, seu unde jura homines possideant?

3. Num verum sit dictum — Licere pluribus ex conspiratione agere quod singulis sit licitum?

4. Quid ad casum?

Solution

1. What is a right and how are rights divided?

A right is a moral power of having, doing, or exacting something. Rights may be divided in a great many ways, but for the purposes of this case it will be sufficient to mention natural rights, such as the right to live and to hold property, rights due to positive law, such as the right of prescription, and rights arising out of contract.

2. What is the foundation of right, or whence do men get their rights?

The foundation of natural rights is man's rational nature, which is ordered by God his Creator to eternal blessedness with God. The duty is imposed upon man by his Creator of working toward the attainment of the end for which he was created; he has consequently the right to fulfil his destiny unhindered by any one else. This is the ultimate foundation for all man's natural rights. Positive law is the foundation of rights derived from that source; and voluntary agreement that of rights arising from contract.

3. Is the saying true: Whatever individuals are allowed to do may be done by many in conspiracy with one another?

In general it is, but sometimes it becomes unlawful because the very fact of numbers acting together in conspiracy causes hardship to others, or interferes with their rights. Thus individuals have a right to walk through a crowded thoroughfare, but it does not follow that a large number of people may form themselves into a compact body and march, so as to interfere with the traffic.

4. The case. Those who boycott another abstain from all intercourse with him and prevent others from having any intercourse with him with a view to compelling him to leave a place or occupation to which he has a legal right. Thus they violate his natural right of liberty to settle and employ himself as he chooses, provided that he does not violate just laws nor the rights of others. They also violate the right that he had acquired by contract with the owner of the property which he hired. Boycotting is also against charity on account of the hardship which it causes and the practical exclusion of the boycotted party from human society. It also interferes seriously with public order and

peace. Doctors, lawyers, and others belonging to like voluntary associations have a right to make rules for their mutual protection, and any one who enters such profession may be required to conform to the established rules. If they will not do so, they may be professionally ostracized. Such ostracism, however, is only partial; it is applied for good reason to compel uniformity for the common good; it is very different from the ordinary boycott, which takes away rights, the enjoyment of which is necessary for human life.

3

A WRONGLY PROVIDENT PAUPER

Caius senex pauperrimus inexpectata fortuna legatum accepit centum libras sterlinas, qui tamen statuit non ad propriam sustentationem eas expendere sed potius tradere amico Julio ut hic post mortem suam curaret Missas pro anima sua celebrandas. Postea Caius ingressus est ptochotrophiam asseverans se esse mediis se sustentandi destitutum, ibique fere per annum expensis publicis vivebat. Post ejus mortem Julius ut fideicommissum exequeretur sacerdoti cuidam pecuniam tradidit, qui tamen dubitabat utrum eam accipere posset totam necne. Unde quæritur:

1. Num Caius in casu contra justitiam commutativam deliquerit?
2. Num Julio licuerit fideicommissum exequi?
3. Quid ad casum?

Solution

1. Did Caius sin against commutative justice in the case?

No; he did wrong in giving the legacy to a trustee with instructions to apply it to have Masses said for him after his death. He should have spent it on his own support during life. Still the transaction was valid, much as if he had spent the legacy on drink or other pleasures; the wasteful expenditure would have been valid. After he has disposed of the money, however wrongfully, he goes to the workhouse, and there his support is given him not conditionally but absolutely, for in truth now he has nothing to live upon.

2. Was Julius allowed to execute the trust?

Julius should not have undertaken the trust, for the effect of it was to throw on the rates one who might have supported himself easily for another year at least. Julius therefore was guilty of co-operating in a fraudulent transaction. We have no data for deciding whether Caius and Julius were in good faith, probably they were; but we are considering merely the objective aspects of the case. After the death of Caius, of course, Julius was under an obligation of handing over the money for Masses according to the instructions of Caius.

3. The case. The priest could receive the money according to the intentions of Caius, who had the power to make a valid transfer of it to him, and who did so. If Caius was in debt at his death, the debts should be paid out of the legacy, but there are no indications that this was the fact.

4

AN AVARICIOUS PRIEST

Titius missionarius in Anglia nec ab omni suspicione avaritiæ exemptus nullo modo est contentus summa pecuniæ quæ ex consuetudine diœceseos ab episcopo approbata a fidelibus offertur intuitu administrationis sacramentorum et aliarum functionum. Immo nisi summam duplo majorem taxata saltem ditiores solvant, eos asperrime exprobat dicendo eos ipsum et Ecclesiam Dei defraudare. Exigit igitur a ditioribus loco unius shillingi pro baptismate duos, et simili ratione auget cetera jura stolæ. Tempore vero exercitiorum spiritualium incipit dubitare utrum piaculum aliquod immo onus restitutionis inde contraxerit necne. Unde de suis dubiis Patrem qui exercitia tradit interrogat. Quæritur:

1. Quomodo dividantur bona clericorum et quodnam jus quoad ea clericis competat in Anglia?

2. Num ex titulo justitiæ commutativæ exigi possint jura stolæ in Anglia?

3. Numquis contra justitiam commutativam peccet qui ultra taxam diœcesanam quid exigat ratione jurium stolæ?

4. Quid ad casum?

Solution

1. How is the property of clerics divided and what rights have clerics therein in England?

Clerics have property rights like other people, and what

they have inherited as private persons or what has been given to them personally is called their patrimony. Quasi-patrimony is what they have acquired by their own labor, either in their clerical capacity as stole fees, stipends for Masses, etc., or otherwise. Savings are what they might have spent on their own support by living up to the ordinary standard, but which they have saved by living frugally. What is derived from all these sources is the private property of the cleric, and like other people he may dispose of it as he chooses. What the cleric derives from his benefice, if he has one, is called ecclesiastical property in the narrower sense. This the cleric may spend on his decent support, but what remains over must by ecclesiastical law be spent on pious causes. In England there are very few benefices; the clergy live on the income of their churches, and besides their support they are paid a small salary from the same or some other source.[1]

2. May stole fees be demanded in England on the title of commutative justice?

Yes, for stole fees form part of their means of support, to which the clergy have a strict right in justice, as St. Thomas teaches.[2]

3. Does he sin against commutative justice who exacts a stole fee higher than what is fixed by the bishop?

Yes; because the regulations of the bishop constitute his title to demand a stole fee; he has no title to demand one higher than what the bishop has fixed; and so if he does this, he takes what does not belong to him, unless it is given freely.

4. The case. Titius was not justified in demanding more for stole fees than the custom of the diocese warranted.

[1] Manual of Moral Theology, vol. i, p. 361 ff.
[2] Summa, II–II, q. 100, a. 3.

If by his manner he forced the faithful to give double of what the bishop had sanctioned, he sinned against commutative justice and is bound to make restitution of what he has taken in excess of the usual sum. He may be excused from making restitution to such as gave the larger sums grudgingly indeed, but still not altogether forced against their will.

5

TITLE BY FINDING

Caius apud veteramentarium emit armarium antiquum quod tradidit Julio opifici reficiendum. Julius vero operi incumbens in loculo quodam secreto invenit tesseram argentariam (*bank-note*) cujus valor erat quinque libræ sterlinæ; ex variis indiciis patebat pecuniam per longum tempus ibidem latuisse, dubitabat vero Julius utrum illam retinere propriam possit necne. Unde quæritur:

1. Num et quibus conditionibus sit inventio titulus dominii?

2. Num titulus prioris domini rei inventæ præscriptione perimatur?

3. Quid ad casum?

Solution

1. Is finding a title to ownership and on what conditions?

Finding of things of value which have no owner is a valid title to ownership if the finder takes possession of them with the intention of making them his own. Things recently lost, which have an owner although he is unknown, may be taken possession of by the finder, who should then use ordinary diligence to find the unknown owner. If the owner be discovered, his property must be restored to him. If he can not be discovered, after a reasonable time the property belongs to the finder.[1]

[1] Manual of Moral Theology, vol. i, p. 371 f.

2. Is the title of the previous owner of lost property destroyed by prescription?

The answer to this question will depend on the law of the country. Prescription of a longer or shorter time gives a title to movables according to canon law and the civil law of most modern nations. According to English law ownership in movables can not be acquired by prescription, which is only recognized as a title to certain rights for the most part in another person's land.

3. The case. Caius bought an old bureau and sent it to a workman, Julius, to mend. Julius found in a secret drawer of the bureau a five-pound note which had obviously been there for a long time. Julius was in doubt as to whether he could keep the note.

We may suppose that the note was in the drawer when Caius bought the bureau, and that neither seller nor buyer knew of its existence. From all appearances it had lain there for a long time. If there was any reasonable chance of discovering the owner of the note, however long ago it was lost, steps should be taken for that purpose. But usually it is not easy to trace the history of such pieces of old furniture, and if this is true of the bureau in question, it would be practically impossible to find the original owner of the bank-note. Julius may, then, say nothing about his find and keep it.

6

PATENT–RIGHT

Caius cujusdam collegii procurator audivit Titium quemdam *Welsbach Incandescent Burners* vendere multo minori pretio quam quo a societate cui exclusivum jus ea vendendi lege civili erat concessum vendebantur. Quamvis suspicaretur Titium legem civilem violare Caius magnam quantitatem emit, ac ita expensas collegii notabiliter minuit. Quod quum audisset Julius alterius collegii procurator Caium arguebat injustitiæ eo quod non tantum legem civilem sed etiam legem naturalem quæ omnibus fructus propriæ industriæ concedat violasset. Cujus sententiæ plus ponderis accessit postquam Titius in jus vocatus in magna summa pecuniæ indemnitatis causa erat condemnatus, unde Caius de propriis obligationibus sollicitus esse incœpit. Quæritur:

1. Quid sit *Patent-right*, et quid de eo lege Anglica statuatur?
2. Num illud jus sit de lege naturali an de lege positiva?
3. Quomodo conscientiam afficiant leges civiles quæ aliquod jus concedant?
4. Quid ad casum?

Solution

1. What is patent-right and what does English law lay down about it?

Patent-right is the exclusive right for a term of years to the proceeds of an invention. The term, according to Eng-

lish law on certain conditions, is fourteen years, and this may be extended to a further term of seven or fourteen years, if the inventor has not, at the end of the first term, reaped the full benefit of his invention, and his patent is for the public benefit. In the United States the term is seventeen years.

2. Is patent-right of natural or positive law?

The question is disputed among jurists and divines. The better opinion is that natural law grants the right in an imperfect and indeterminate way, and that it is determined by positive law.[1]

3. How do civil laws which grant a right affect the conscience?

The civil laws which define and determine natural rights or obligations bind the conscience under sin, for they derive their force chiefly from the law of nature which they determine. With regard to other civil laws much will depend on the intention of the legislator. With reference to English-speaking countries we shall probably not be far wrong if we say that positive laws which confer a right which is not derived from the law of nature, such as prescription, may be interpreted in this sense; the party whom the law favors may use the right granted, but if he does not move in the matter, there is no obligation on the party burdened voluntarily to yield it to him.

4. The case. Patent-right is rooted at least in natural law though it is determined by positive law. Hence Titius violated justice by infringing the rights of the company which owned the patent of Welsbach Incandescent Burners. But when the cheap burners were being publicly offered for sale, Caius was justified in buying them at the mar-

[1] Manual of Moral Theology, vol. i, p. 347.

ket price. He was under no obligation to defend the rights of the patentee. There is no reason, then, why his conscience should be disturbed, even after the lawsuit. Titius will make compensation for the loss which the company has suffered. Nor does Caius commit sin by co-operating with the sin which Titius commits by selling the burners, for as I may for grave reason borrow a loan at usurious interest, although by lending it the usurer sins, so the burners might be bought though not sold without sin.[1]

[1] St. Alphonsus, lib. ii, tract. 3, n. 47.

7

COPYRIGHT

Titius in quadam ephemeride legit editionem novam in Statibus Unitis Americæ esse editam libri cujusdam ab Episcopo Anglo aliquot abhinc annis conscripti et Londinii publicati. Dictus autem Episcopus conquestus est suam licentiam non fuisse petitam ut liber de novo ederetur, imo editionem esse factam contra honestatem litterariam et comitatem. Titius igitur theologum quemdam rogavit utrum esset etiam contra honestatem morum et justitiam. Unde quæritur:

1. Num detur jus ex lege naturæ exclusivum iterum proprium librum edendi?

2. Si lex municipalis illud jus auctori concedat, num ad conscientiam pertineat legem non violare?

3. Quale sit jus concessum lege Anglica in hac materia et lege Statuum Fœderatorum?

4. Quid ad casum?

Solution

1. Is copyright of natural law?

It is a disputed point whether copyright, *i.e.*, the exclusive right to multiply copies of a book, belongs to natural or positive law. All agree that until the book has been published the complete ownership of it belongs to the author, and that anyone who deprives him of it against his will commits theft. After publication some authorities hold that as far as the law

of nature goes anyone who buys a copy may make what use of it he pleases, and may even issue it again without the author's permission if he chooses to do so. He is merely making use of his own property. Others, however, affirm that by the law of nature an author may reserve to himself the right of re-issuing his book, while he publishes and sells it to buyers for all other purposes. This is the better opinion.[1]

2. If the civil law protects copyright, is it matter of conscience not to infringe it?

Yes, for the case is one in which positive law determines what is at least suggested by the law of nature, and what is in entire agreement with its dictates.[2]

3. What is the law of copyright in England and in the United States?

In England the law protects copyright for the author's life and for seven years more, or for forty-two years, if this period is longer than the former. In the United States the original term runs for twenty-eight years, but it may be renewed for a further period of fourteen years. A foreign author may obtain copyright in the United States provided that the book is produced in the United States from type set up there or from plates manufactured there.

4. The case. The English bishop in the case certainly had grounds for complaining that his book had been issued in America without his permission. As is clear from the answers given above, it is not absolutely certain that the act was also against honesty and justice, for we must suppose that the bishop had not fulfilled the conditions for acquiring copyright in the United States.

[1] Manual of Moral Theology, vol. i, p. 346. [2] Ibid., p. 126.

8

PRESCRIPTION

Caius architectus lineamenta novi ædificii pro quodam collegio religiosorum in Anglia præparaverat, quum tamen ob defectum pecuniæ statim ædificare religiosi non possent, eorum superior Caium rogavit ut suas expensas peteret. Caius volebat ut opus sibi perficiendum committeretur et proinde expensas quæ facile centum libras sterlinas excederent statim petere nolebat, quamvis non semel superior eum rogasset. Alii superiores successerunt et tandem eorum quidam, qui sciebat per quindecim saltem annos nihil Caium dixisse de suis expensis ac proinde putabat eum pecuniam renunciasse, dubitare incepit utrum etiamsi nunc solutionem peteret solvere ipse teneretur. Unde quæritur:

1. Quid sit præscriptio, et quænam conditiones ad præscribendum requirantur?

2. Quid sint *Statutes of Limitation* et quinam eorum effectus?

3. Quid ad casum?

Solution

1. This question is answered in "Manual of Moral Theology," vol. i, p. 376 ff.

2. What are the Statutes of Limitation and what is their effect?

Statutes of Limitation fix a certain time within which a right of action must be enforced. In English law the Real

Property Limitation Act, 1874, fixes twelve years as the period within which an action to recover real property must be brought, and the effect of the expiration of the statutory time is not only to bar the right of action, but to extinguish altogether the title of the person against whom the time limit has run. Other Limitation Acts differ from this in that they only bar the remedy; they do not extinguish the right. Thus by the Limitation Act of 1623, as amended by subsequent statutes, actions for debt grounded on any lending or contract without specialty must be brought within six years after the time at which payment became due. But although after the lapse of the statutory period no action may be brought, yet the debt is not extinguished. Sir F. Pollock says: "Now there is nothing in these statutes to extinguish an obligation once created. The party who neglects to enforce his right by action can not insist upon so enforcing it after a certain time. But the right itself is not gone. It is not correct even to say without qualification that there is no right to sue, for the protection given by the statutes is of no avail to a defendant unless he expressly claims it. . . . Although the creditor can not enforce payment by direct process of law, he is not the less entitled to use any other means of obtaining it which he might lawfully have used before." [1]

3. The case. Caius, an architect, neglected to send in his bill for work done for some Religious, because he hoped to get the whole job if he waited. Fifteen years elapsed and nothing was said by either party about the debt. The Religious Superior began to doubt whether there would be any obligation to pay the bill even if the architect sent it in after the lapse of so long a time.

[1] Principles of Contract, p. 599. 4th ed.

From what has been said already it is clear that the architect could not bring an action at law to recover payment of his money. In certain circumstances the debtor might even presume that the debt had been condoned and refuse to pay, even if afterward the bill were sent in. Apart from this, as the Statute of Limitation does not extinguish the debt, and as there is no prescription in such cases according to English law, the obligation in conscience to pay the debt still remains, if the architect chooses to demand payment. Otherwise he may be presumed to have abandoned his claim.

9

WHOSE IS THE INCREMENT?

Caius officium secretarii pro quadam societate gesserat. Jam vero a pluribus annis ab officio liber quodam die curiositate ductus folia libri quo erat usus ad litteras pro societate scribendas vertebat quum tesseras epistolis affigendas valoris unius libræ sterlinæ in libro inveniret. Recenter vero forma tesserarum plus semel est auctoritate gubernii mutata, unde valor tesserarum inventarum apud earum collectores decies est auctus. Caius igitur rogabat confessarium utrum unam libram an decem societati ad quam tesseræ pertinebant reddere teneretur. Unde quæritur:

1. Quomodo dividantur fructus rei et ad quem pertineant?

2. Quid sit titulus inventionis et num præscriptio rerum inventarum lege nostra detur?

3. Quid ad casum?

Solution

1. This question is answered above, p. 243.

2. See an answer to this question, p. 253.

3. The case. The stamps belonged to the company of which Caius had been secretary. However, by the unconscious action of Caius in keeping them for some years their value had increased tenfold. He is bound to restore to the company the value which belongs to it, viz., one pound. We may rest his title to keep what is over either on the

ground that it is increment due to his own action, although unconscious, or on the ground of finding which may be applied at least to the surplus value of the stamps. As the stamps are a form of money, there is no obligation to restore them in their identity to the company any more than there would be an obligation to restore the identical coins lent, in the case of paying a debt. All that belongs to the company is the value which the stamps represented at the time when they were intended for use.

RESTITUTION

1

DEFRAUDING A RAILWAY COMPANY

Titius quum frequenter via ferrea uteretur itinera faciendo tesseram ad sex menses emebat quo temporis spatio elapso itinera similiter faciebat ad mensem quin tesseram renovaret vel aliter pretium itineris solveret. Quæ quum in confessione manifestasset confessarius interrogabat quodnam esset pretium societati debitum; cui Titius respondit summam fore circiter duas libras sterlinas. His auditis confessarius apud se considerabat utrum sub gravi Titius duas libras sterlinas societati viæ ferreæ restituere teneretur. Unde quæritur:

1. Qualis materia requiratur ad grave peccatum contra justitiam constituendum?
2. Num in Anglia propter minorem pecuniæ valorem major quam apud alias Europæ gentes summa requiratur ad gravem materiam?
3. Num et quomodo furta minuta coalescant?
4. Quid ad casum?

Solution

1. What matter is required to constitute a grave sin against justice?

According to St. Thomas (II–II, q. 59, a. 4) the sin of injustice is mortal because it is against charity, which is the life of the soul. But sins against charity are

only venial if the matter be light. Matter against charity will be grave if the act causes another serious sadness, or tends notably to disturb peace and harmony. Justice, it is true, looks rather at objective relations than at subjective dispositions, and so although charity will always serve as a measure of the gravity of sins against justice, yet in estimating the gravity of these sins we must take as our norm an ordinarily constituted person, not such as are specially sensitive. Loss of property in such a quantity as would cause serious trouble to an ordinarily constituted person will be a serious loss, and the theft of it will be a serious sin against justice. The theft of what would suffice to support the owner of the property and his family for a day would ordinarily be a serious loss to him, and would be grave matter. This rule serves for ordinary cases; for a measure of the gravity of theft from very rich persons or from wealthy companies we must have recourse to other considerations besides the foregoing. For theft does injury to the community and to the security of property, as well as to the individual owner. Even if the individual owner does not suffer loss which is serious for him, yet the harm which theft does to the community and to social security may be notable, and if it is notable, the theft will be mortally sinful. What sum is notable on this account will depend on circumstances of time and place. Although the precise sum can not be determined with mathematical exactness, yet, according to the common opinion, a sum of about one pound sterling is at present sufficient to constitute a mortal sin of theft, when it is taken even from the richest.

2. Is a larger sum required to constitute grave matter in England than in other countries on account of the less value of money there?

The affirmative has been maintained by some theologians. However, the conditions of modern commerce tend to equalize the value of money; or, in other words, the whole world is now one big market for money and the chief articles of commerce. If either money or goods are cheaper in one country than in another, trade is attracted thither, and trade soon tends to equalize prices. Hence there is no very notable difference now in the value of money in the different civilized countries of the world. Prices of different articles are, indeed, different in different places, and this fact makes trade profitable; but the general cost of the same standard of living is much the same all the world over.

3. Do small thefts coalesce, and how?

Small thefts certainly coalesce, as is clear from Proposition 38, condemned by Innocent XI. Small thefts coalesce, owing to the intention of the thief finally to steal a large sum, or owing to conspiracy among many, each of whom steals something; also owing to the hoarding of small sums stolen at short intervals.[1]

4. The case. Titius traveled on the railway for a month after his season ticket had expired, without paying his fare. He thereby defrauded the railway company of two pounds. He took that value which belonged to somebody else, against that person's reasonable wish. He therefore committed theft, and as the matter is grave, he is bound under grave sin to make restitution of that sum to the company.

[1] Manual of Moral Theology, vol. i, p. 396.

2

A MALICIOUS INTENTION

Philippus, Catholicus, venenum in horto suo ponebat ad animalia noxia interficienda. Aliquando felim vel canem etiam occisos veneno in horto invenerat quum ei cogitatio occurreret: "Utinam iste canis pretiosus vicini mei Caii hoc modo interficeretur, nam sæpe mihi Caius molestus fuit, et non raro in hortum meum ejus canem penetrasse inveni." Spe igitur ductus occidendi canem Caii qui genere Sancti Bernardi dicto ortus est, majorem quantitatem veneni posuit, ac proximo mane istum canem infelicem in angulo horti mortuum invenit. Post quem sepultum conscientia de restitutione facienda eum mordebat. Unde quæritur:

1. Num actum externum intentio facere possit injustum?
2. Quid sit causa occasionalis et causa accidentalis damni?
3. Quandonam ponens causam damni alterius excusetur a restitutione facienda etiamsi damnum fuerit prævisum vel optatum?
4. Quid ad casum?

Solution

1. Can the intention make an action unjust which otherwise is not unjust?

Some theologians, with Lugo, assert that it can, but the common opinion is against them. For the intention with

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which an action is done does not alter the nature of its influence on the effect produced, and whether an act is unjust or not, depends on this influence.[1]

2. What is an occasional, and an accidental cause of damage?

An occasion is that which, being put, an effect follows from some other cause. Thus if A murder B, and C is taken up on suspicion, A is the occasion of C's arrest. An accidental cause is that from which the effect was not probable, though possible, as if A digs a trench where few people pass, but B, a blind man, passes that way, falls into the trench, and is killed; A is the accidental cause of B's death.

3. When is one who puts the cause of another's damage excused from making restitution, even though the damage was foreseen and desired? Besides theological fault, it is necessary that the action of him who is to be obliged to make restitution be the efficient cause of the damage, and that it be unjust. For unjust actions alone impose the obligation of making restitution, and nobody is bound to make restitution for damage which he did not cause.

4. The case. Philip poisoned his neighbor's dog out of spite. He certainly committed a grave sin against charity. But as he put the poison in his own garden, into which his neighbor's dog sometimes strayed, his action was not the efficient cause, but only the accidental cause of its death. He may therefore be excused from the obligation of making restitution, according to the better opinion.

[1] St. Alphonsus, lib. iii, n. 584.

3

A TIPSTER'S OBLIGATIONS

Titius confessario explicuit se magnam pecuniæ summam esse lucratum fingendo se esse peritum in cursibus equorum et scriptis epistolis consilium pro quinque shillingis dando omnibus petentibus et sponsioni indulgere volentibus de equo qui esset victurus in cursibus occurrentibus. Addidit se casu quodam aliquando verum prædixisse unde fama et lucrum ipsi accreverint, se nunc prorsus nescire quinam se consuluerint ac pecuniam sibi solverint. Confessarius vero quum non constet num jure naturali an positivo debitores ex delicto incertis dominis restitutionem facere teneantur, ratus certo non teneri jure positivo Anglico, eum a restitutione facienda excusabat. Unde quæritur:

1. Quænam sint radices restitutionis?

2. Cuinam sit restituendum? Numquid statuat de hac re lex ecclesiastica?

3. In quanam materia sit lex ecclesiastica et lex civilis respective competens?

4. Quid ad casum?

Solution

1. What are the roots of restitution?

The roots of restitution are the causes which impose the obligation of making restitution, and they may be reduced to the possession of what belongs to another, and the doing of unjust damage to another.[1]

[1] Manual of Moral Theology, vol. i, p. 399.

2. To whom must restitution be made? Does ecclesiastical law lay down anything on this head?

In general, restitution must be made to those who suffered the injury. If these are unknown, ecclesiastical law lays down that at any rate, in the case of usury and simony, restitution should be made to the poor or to pious causes. More probably this is a determination of the natural law by the Church.[1]

3. In what matter is ecclesiastical and civil law respectively competent?

This question is answered by Leo XIII in his Constitution *Immortale Dei*, Nov. 1, 1885: "Whatever therefore in things human is of a sacred character, whatever belongs either of its own nature or by reason of the end to which it is referred to the salvation of souls, or to the worship of God, is subject to the power and judgment of the Church. Whatever is to be ranged under the civil and political order is rightly subject to the civil authority."

4. The case. On the supposition that Titius got the money by fraudulently holding himself out as an expert in horses that were likely to win races, he had no right to keep the money, and was bound to make restitution to charitable or religious purposes, as the real owners were unknown. However, in practice, tipsters are guided, if not by their own knowledge of the chances, at any rate by the course of betting published in the papers, and other probable indications of the chances of success. Moreover, those who consult them know that certain information can not be had from the nature of the case. They consult a tipster because they are not able to make up their own minds as to the placing of their bet. He helps them to

[1] Manual of Moral Theology, vol. i, p. 424.

make up their minds, and payment is made for that as much as for anything else. Titius should be told to seek a livelihood in some other way, but as far as the past is concerned it would seem, in general, that such as he may be excused from making restitution on the grounds that have just been indicated. So that the confessor's decision was not practically wrong, though he rested it on wrong grounds.

4

RESTITUTION IN ANOTHER SPECIES OF GOODS

Caius sacerdos coadjutor erat Titio alteri sacerdoti curato qui ejus consilium de suis obligationibus in his circumstantiis rogabat. Sex abhinc annis necessitate compulsus mutuatus est Titius centum libras a Patricio tunc quidem amicissimo, recenter vero infensissimo facto inimico. Graviter et sæpius Patricius calumniatus est Titium ita ut apud fideles ac concives grave damnum fama ejus sit passa, quod ut sincero æstimat haud compensaret summa centum librarum. In animo igitur est sibi retinere £100 famæ injuste læsæ compensationem aliquam, quum bene sciat legem civilem Patricium frustra invocaturum ut debitum recuperet. Unde quæritur:

1. Quid sit restitutio et unde oriatur obligatio restituendi?

2. Data impossibilitate restituendi ex bonis ejusdem ordinis, num adsit obligatio restituendi in bonis diversi ordinis?

3. Qualis sit effectus legum nostrarum — *Statutes of Limitation?*

4. Quid ad casum?

Solution

1. What is restitution and whence arises the obligation of making restitution?

Restitution is reparation for an injury that has been done to another. Such reparation is required by the very nature

of the virtue of justice, which prescribes that each should have his own, and consequently that, when one has been deprived of what belongs to him, the same thing, or its equivalent, shall be restored to him.[1]

2. When it is impossible to make restitution in goods of the same species, is there an obligation to make it in goods of another species?

This is a disputed point among theologians, but according to St. Alphonsus (III, n. 627) the more common and more probable opinion denies any such obligation.

3. What is the effect of our Statutes of Limitation?

This question is answered above, p. 261.

4. The case. If Titius is certain that he has suffered loss in money to the extent of £100 on account of the calumnies of Patrick, he may keep the £100 which he borrowed from him. If his reputation alone has suffered, he should not in practice constitute himself his own judge in his own case, as he would do if he kept the money as compensation for Patrick's calumnies. He has, indeed, a probable opinion in his favor, but he should not appropriate to himself what belongs to another on the strength of a merely probable opinion. The Statutes of Limitation bar Patrick's remedy, it is true, but do not extinguish the debt. Titius then should pay back the £100, and if that does not bring about a reconciliation, he may threaten Patrick with an action for slander, unless he desists from his calumnies.

[1] Manual of Moral Theology, vol. i, p. 398.

5

A CONFESSOR'S MISTAKE

Titius mutuatus est centum libras sterlinas a Caio consanguineo, qui quum sciret Titium angustiis esse oppressum per plures annos debitam pecuniam non postulavit, post septem vero annos rebus Titii in melius conversis rogavit eum ut centum libras redderet. Titius dubitat utrum post tot annos elapsos solvere pecuniam teneatur quum debitum sit extinctum Statuto Limitationis quod vocatur; attamen adit confessarium et rogat utrum teneatur necne. Hic dicit honestum esse pecuniam solvere, obligationem vero strictam non adesse. Unde quæritur:

1. Quid sint Statutes of Limitation et quinam eorum effectus?

2. Ad quid tenatur confessarius qui indebite exemerit pœnitentem ob onere restitutionis?

3. Quid ad casum?

Solution

1. This question is answered above, p. 261.

2. What are the obligations of a confessor who has wrongly excused a penitent from the duty of making restitution?

If the confessor excuses the penitent out of malice or gravely culpable ignorance, he is bound to correct his error, and if he does not do so, or if now the penitent is unwilling, or is not able to make restitution, the confessor

will be bound to make it for him. If there was no grave fault in the confessor's advice, he will be bound to correct the mistake as far as he can, and if he can not do this, he will be excused from further obligation.

3. The case. Titius was wrong in thinking that the effect of the Statutes of Limitation for an action of debt is to extinguish the right after six years. Those who administer the law and lawyers are unanimous on the point, and agree that it only bars the remedy. But if the debt is not extinguished by the law, it still remains to be paid. The confessor, therefore, was wrong in his decision, and if he gave it from gravely culpable ignorance, he is bound to correct his mistake, and if Titius will not now make restitution, or can not now, though he could have done before, the confessor will be bound to make it for him, as was said above.

6

EXCUSED FROM MAKING RESTITUTION

Titius catholicus qui contractus ædibus ædificandis init (*building contractor*) confitetur se aliquibus abhinc annis ex errore a quodam quadringentas libras plus quam quod ipsi deberetur accepisse, de qua re nunc conscientia angitur. Caius confessarius interrogat utrum eas restituere valeat. Respondit Titius se nihil superfluum habere, accepta et debita singulis annis fere esse æqualia, posse quidem absolute restitutionem facere, si sit necessarium ad salutem, dummodo duas filias a schola amoveat, et filium adultum qui hactenus occupationem juxta statum non obtinuit ut domo egrediatur ad vitam quocumque labore sustentandum compellat. Caius vult scire utrum obligationem restituendi in dictis circumstantiis imponere debeat. Unde quæritur:

1. Unde oriatur obligatio restitutionis?
2. Quænam sint radices restitutionis?
3. Quænam causæ a restitutione excusent?
4. Quid ad casum?

Solution

1. This question is answered above, p. 273.
2. This is answered above, p. 270.
3. What excuses from making restitution?

The condonation of the debt by the creditor, physical or moral impossibility as long as they last, and in England absolute discharge after bankruptcy.[1]

[1] Manual of Moral Theology, vol. i, p. 437.

4. The case. Titius, a contractor, was paid £400 more than was due to him. He kept the money for some years, and then asked his confessor what he was bound to do. He told his confessor that he could not now restore the money without recalling two daughters from school, and sending an adult son, who was living with him, out of the house, to make a living as best he could. Under these circumstances, Titius is not bound to restore the £400 at once. The daughters have a right to receive the education which is usual in their condition of life, and the son should not be turned out on the streets. If Titius tried, he might be able to lay by £10 a year, and thus pay off by degrees a large part of the debt. If he can do anything like this, he will be bound to do it.

7

RESTITUTION FOR ADULTERY

Titia protestantica petebat ut Paulus sacerdos eam in Ecclesiam catholicam reciperet. Paulus autem eam optime instructam esse invenit, difficultatem solam quam sentiret esse utrum teneretur marito veritatem manifestare de paternitate filiæ suæ unicæ. Certo enim sciebat filiam esse non mariti quamvis hic credat esse suam sed adulterinam. Valde probabile est Titiam ob ætatem nullam aliam prolem habituram quo casu filia unica succedet in matris bona et in magnam saltem partem bonorum mariti. Unde quæritur:

1. Quo jure liberi succedant in bona parentum?
2. Cuinam, a quo, et qualis restitutio ob adulterium sit facienda?
3. Quid ad casum?

Solution

1. By what right do children succeed to the property of their parents?

According to the common opinion, children have a natural right to succeed to the property of their parents, though this right may be determined and modified by positive law, or by the will of the parents, and even be altogether taken away for good reason.[1]

2. To whom, by whom, and what restitution is due for adultery?

[1] Lehmkuhl, vol. i, n. 1141.

Adulterers are bound jointly and severally to make restitution for all the damage which follows to others from the adultery on account of the illegitimate child being supposed to be legitimate. This, however, supposes that it is known for certain that a child is illegitimate, and this can seldom happen if the husband is living maritally with his wife. If he is not living with her, both he and others will know that the child is illegitimate, and so there will be no damage done which has to be repaired; for the merely personal injury which adultery inflicts on the adulterer's consort is irreparable.

3. The case. Titia is not bound to make known her sin to her husband, and she should not do it. More harm than good would come of it. The case says that she is certain that her child is illegitimate, though her husband thinks it is his. On this hypothesis she should make up, out of her own property, the damage which her husband's property incurs on account of his treating the child as his, unless he does this out of affection for the child, and not precisely because it is his. In practice, the illegitimacy will either be doubtful, and then Titia will be strictly bound to nothing, or her husband will know it, and then whatever he spends on the child will be given to it knowingly, and no restitution will be due to him, or to others, for this.[1]

[1] St. Alphonsus, lib. iii, n. 651.

8

POSSESSION IN DOUBTFUL FAITH

Vir quidam aspectu satis inhonesto portam presbyterii cujusdam pulsavit et leporem cum salmone grandi obtulit Titio sacerdoti pro paucis shillingis. Titius graviter suspicatus est res esse furatas, attamen quum proxima dies esset sabbatum sanctum et dominica sequens paschalis, putabat fortunam non esse spernendam easque emit. Post paucos dies certo invenit res fuisse furatas ac proin scrupulo angitur de emptione facta, et utrum aliqua obligatio sibi incumbat. Unde quæritur:

1. Quænam sint obligationes possessoris dubiæ fidei?
2. Numquæ essent obligationes Titii si res dictas emisset in nundinis apertis (*open market*)?
3. Quid ad casum?

Solution

1. What are the obligations of a possessor in doubtful faith?

One who deprives another of the possession of something without being certain that it is his must make restitution, for he injured the possessor's rights. If he obtained possession in good faith, and afterwards began to doubt about his right of possession, he must make inquiries as to the true owner, and abide by the result. If, after inquiry, the doubt remains, he may retain possession. If he obtained possession in doubtful faith, and after inquiry the doubt

remains, he must make restitution of part, according to the quality of the doubt, according to the common opinion. D'Annibale and Bucceroni think that even in this case possession of the whole may be retained with the intention of making restitution to the true owner if and when he appears.

2. What would be the obligations of Titius if he had bought the objects mentioned in the case in open market?

If he had bought them in open market in good faith, he would have acquired ownership of the goods, as the law in that case gives a valid title to the property thus bought.

3. The case. Titius did wrong in buying the hare and salmon while in doubt whether the seller had the right to sell, and in afterward eating them in the same state of doubt. He knowingly exposed himself to the danger of consuming what belonged to some one else and sinned against justice. When afterward he found out for certain that they were stolen, he became obliged to make restitution to the true owner, for having unwarrantably consumed his property. If he had bought and consumed the goods in good faith, he would have been bound to nothing.

9

PREFERENCE IN BANKRUPTCY

Titius ingenti ære alieno gravatus collocutus de miserrimo suo statu cum Caio amico et creditore suo ab eo consilium habuit ut quamprimum bonis cederet ne pejor fieret creditorum conditio. Simul tamen Caius eum rogabat ut sibi ante cessionem restitueret quod a se mutuum accepisset. Præstitit id Titius et paulo post foro cessit. Porro hac cessione reliqui creditores vix tertiam suorum bonorum partem receperunt. Cujus conscius Caius et anxietates conscientiæ exinde perpessus eas deponendi causa amicum theologum adiit eique declaravit se revera cum aliorum creditorum præjudicio suum a Titio ex integro recepisse, in his tamen specialibus adjunctis: scilicet creditores ceteros huic pecuniam fenori dedisse, ipsum vero eam ex caritate gratuito fuisse mutuatum; illos ditissimos, ipsum vero præ illis pauperem; insuper et primum qui restitutionem petiisset. Unde quæritur:

1. Quo ordine sit restituendum?

2. Num et sub quibus conditionibus excuset cessio bonorum ab integra restitutione?

3. Quid ad casum?

Solution

1. In what order must restitution be made?

If the debtor is solvent, the order of paying his debts is immaterial. If he is not solvent, he will be adjudged a bankrupt, and his property will be distributed ratably

among his creditors, with the exception of some, to whom the law gives preference. English law gives such a preference to rates and taxes, and to certain salaries and wages.[1]

2. Does bankruptcy excuse from full payment of one's debts, and on what conditions?

The answer to this question will depend upon the law of the country. According to English law, a bankrupt who has conformed in all things to the law, and has paid at least ten shillings in the pound of his debts, may be granted an absolute discharge, the effect of which is to make him a clear man again. Large discretion is given to the judge to defer, or to grant on condition, or to grant absolutely, a bankrupt's discharge.[2]

3. The case. We have to do with Caius primarily. The payment of his debt in full, when it was morally certain that Titius was insolvent, would in all probability be regarded in English law as a fraudulent preference, and if it came to the knowledge of the official receiver or trustee in bankruptcy, the money would have to be refunded. However, no moral fault would seem to attach to Caius. His debt was due, as we suppose; he had a right to ask for payment, and having got it, he may keep it, unless compelled by law to refund it. Titius was not justified in paying Caius in full under the circumstances, according to strict law. He paid not to avoid pressure, but in order that a friend might not suffer from his bankruptcy. In the eyes of the law, he would, in all probability, be held guilty of fraudulent preference, and this would prevent him getting his discharge.[3]

[1] Manual of Moral Theology, vol. i, p. 429.

[2] Stephen, Commentaries on the Laws of England, vol. ii, p. 260. Manual of Moral Theology, vol. i, p. 451.

[3] Manual of Moral Theology, vol. i, p. 434.

10

FRAUDULENT PREFERENCE

Julius amico Caio negotiatori commodavit mille libras sterlinas; quum vero negotia non bene succederent bonis cedere coactus est Caius. Paucis diebus antequam petitionem ad curiam direxit Caius propter antiquam amicitiam, ut ait, mille libras integras grato Julio tradidit. Postea vero ejus bona inter ceteros creditores distributa vix dimidiæ parti summæ singulis debitæ æquivalebant. Hinc Julius optimus catholicus scrupulis motus ad confessarium accessit qui quum omnia audisset Julium utpote cooperatorem cum Caio in damnificatione injusta ceterorum creditorum ad eis restituendum coegit. Unde quæritur:

1. Quænam sint radices restitutionis?
2. Quando debitor non est solvendo ad quid teneatur sive lege naturali sive municipali?
3. Num probabili vel etiam probabiliori sententia nixus possit confessarius obligationem restitutionis pœnitenti imponere?
4. Quid ad casum?

Solution

1. This question is answered above, p. 270.
2. When a debtor is not solvent, what is he bound to do by natural or municipal law?

As soon as a debtor recognizes that he can not pay his debts in full, and that there is no reasonable probability of his being able to do so, he is bound to take steps to enter

into a composition with his creditors, or to have himself declared bankrupt. If he goes on to contract new debts after recognizing that he is hopelessly insolvent, he does an injury to his creditors and renders himself liable to have his discharge suspended, if not altogether refused.

3. Can a confessor impose an obligation on a penitent of making restitution when there is a probable, or more probable opinion, in favor of the obligation?

No; he can not. An obligation must not be imposed unless it is morally certain that it exists.[1]

4. The case. Caius by a fraudulent preference just before bankruptcy paid a debt of £1000 in full owed to his friend Julius. The other creditors received hardly half of what was owing to them. Julius mentioned this in confession, and his confessor compelled him to restore on the ground of co-operation in the unjust action of Caius.

The confessor did wrong, for Julius had a right to the money, and he did no injustice to the other creditors by taking it when it was offered by Caius. Caius indeed had obligations toward the other creditors on account of his contract with them, and if he could not pay all in full, he was bound to pay all ratably. They had all a certain indefinite claim against his estate. Caius did wrong in preferring Julius, but when it was offered, Julius could lawfully take the £1000; it did not belong to anybody else; it became his on acceptance as payment for his debt. His co-operation with Caius was material, not formal, and lawful as it is lawful to accept a usurious loan from a usurer. There is at any rate good ground, both intrinsic and extrinsic, for this view.[2]

[1] St. Alphonsus, lib. i, nn. 26, 87; lib. vi, n. 604.
[2] Lehmkuhl, vol. i, n. 1027.

[11

FRAUDULENT FORESIGHT

Titius mercator catholicus quum se infra breve tempus bonis necessario cessurum sentiret, Rectorem Collegii ubi duo filii educarentur duo millia librarum misit quæ summa sufficeret ad expensas totius educationis futuræ filiorum solvendas. Res accidit ut præviderat, at solutis quindecim shillingis pro singulis libris debitis, demissionem legalem (*absolute discharge*) accepit quin quidquam de illis duobus millibus librarum a creditoribus sciretur. Confessionem paschalem peragens hæc omnia confessario declarabat Titius. Unde quæritur:

1. Quid sit cessio bonorum fraudulenta?
2. Qui cessit bonis demissione accepta num debita plene solvere adhuc teneatur?
3. Quid de obligationibus et modo agendi Titii?

Solution

1. What is fraudulent bankruptcy?

Bankruptcy may be fraudulent in many ways. A few instances may be given. "1. If the bankrupt does not, to the best of his knowledge and belief, discover to his trustee all his property, and the mode in which he has disposed of any part thereof; except in the ordinary way of his trade, if any, or in the ordinary expenses of his family. 2. If he does not deliver up all such part of his property as is in his custody or control, and which he is required by law to

deliver up. 3. If, after the presentation of a petition, or within four months before, he conceals any part of his property to the value of £10 or upwards, or conceals any debt due to or from him. 4. If within the same period he removes any part of his property to the value of £10 or upwards." [1]

2. This question was answered above, p. 284.

3. What about the obligations and the way of acting of Titius? Titius is a fraudulent bankrupt, and his discharge will not avail him in conscience. The greater part at least of the £2000 which he sent to the rector of the college belonged to his creditors, and the effect of his action is that his sons are being educated at the expense of his creditors. Titius may allow the rector to keep practically all that is due to the college for the education of the two boys up to the present, but either the rest of the £2000 or a sum equal to it he should distribute among his creditors.

[1] Stephen, Commentaries, vol. ii, p. 244.

CONTRACTS

1

UNLAWFUL CONTRACTS

Quidam sacerdos sequentes casus solvendos proposuit:

I. Adalbertus ingentem copiam mercium clam introduxit quin solverit vectigalia pro ipsis debita, auxilio cujusdam Thomæ cui quinquaginta libras jam antea pro suo labore dederat, et quinquaginta promiserat addendas opere perfecto. Attamen promissis non stetit audiens talem contractum utpote de materia illicita ab initio fuisse invalidum.

II. Seduxerat idem puellam ejus assensum in peccatum postulans tamquam conditionem pro matrimonio postea contrahendo. Sed quum iterum non stetisset promissis, ab eadem in judicium vocatus mulcta 1000 librarum propter fidem non servatam plectitur, quam ne compelleretur solvere in aliam regionem abiit. Unde quæritur:

1. Quænam sit obligatio legis municipalis in Anglia?

2. Quando nostra lex municipalis contractum irritet, num sit irritus in conscientia contractus?

3. Num et quomodo obliget contractus turpis?

4. Resolvantur casus propositi.

Solution

1. What is the obligation of municipal law in England? Where English law applies or determines natural law, it

binds the conscience under pain of sin. A merely positive law in England is probably penal and binds the conscience only to submit to the penalty if it is imposed by competent authority.[1]

2. When our municipal law voids a contract, is the contract void in conscience?

Not at once and immediately; if it is valid by the law of nature, it remains valid unless some one moves to take advantage of the voiding law and set the contract aside.[2]

3. Does an immoral contract bind, and in what manner?

A contract to do something which is morally wrong is null and void in itself before the bad action agreed upon is done, as there can not be an obligation to do wrong. After the bad action has been done by one party, many theologians hold that the other party to the contract is bound to fulfil his promise, not by reason of the original contract, but because of a new contract, *facio ut des*, concluded in the very doing of the action. Others deny this, and hold that an immoral contract is and remains invalid.[3]

4. The cases. The contract which Albert made with Thomas was against positive law, but not necessarily immoral. It was therefore a valid contract and obligatory in conscience. Albert is therefore bound to pay the second fifty pounds to Thomas.

This same Albert seduced a woman by making her a promise of marriage. As he did not fulfil his promise the woman brought an action against him in court and obtained £1000 damages. Albert fled the country to avoid payment. Apart from the question whether the promise of marriage

[1] Manual of Moral Theology, vol. i, p. 125.
[2] Ibid., pp. 128, 478. [3] Ibid., p. 488.

was valid or not, Albert did the woman an injury, for which he is bound to make compensation as far as possible. The court condemns him to pay £1000 damages for the injury, and he is bound in consequence to submit and to pay the sum. His flying from the country will not excuse him.

2

DISHONEST SERVANTS

Titius qui nobili cuidam familiæ famulabatur confessus est se detexisse conservum quemdam furta plurima bonorum domini communis patrasse nec se domino ea manifestasse imo summam pecuniæ a fure accepisse ut altum silentium de furtis servaret. Confessarius vero est incertus utrum Titius peccaverit necne, et utrum ad restitutionem teneatur. Unde:

1. Num famuli furta bonorum domini sui impedire teneantur?

2. Quid sit contractus turpis et num commodum inde reportatum retinere liceat?

3. Quatenus adsit obligatio restitutionis ratione participationis in furtis alienis?

4. Quid ad casum?

Solution

1. Are servants bound to prevent thefts of their master's property?

Yes; they are so bound at least in charity, and they are bound in justice also if the goods of their master that are stolen were specially entrusted to their charge and keeping.[1]

2. What is an immoral contract, and is it allowable to retain the consideration which has been paid on account of it?

[1] Manual of Moral Theology, vol. i, p. 290.

See this question answered above, p. 290.

3. How far does partaking in another's theft impose an obligation to make restitution?

A partner in another's theft is bound to restore any stolen goods that he received, and if he took part in the acts of theft, or by his conduct encouraged the thief in his thieving, he will also be bound jointly and severally with the thief to make good all the damage done.

4. The case. Titius was bound at least in charity to inform his master about the thefts of his fellow servant at least if this was necessary to prevent future thefts. He was bound also in justice if the care of his master's property was specially entrusted to him, and he will be bound to make restitution for failing in this duty of justice imposed on him by the nature of his office. Titius, moreover, took money from the thief and promised not to inform on him. If we suppose that Titius had no special charge of the stolen property, and the only question is of his obligation concerning past thefts of his fellow servant, the contract made with the thief was indeed immoral and made him guilty of an indictable offence called misprision of felony. However, it is not certain that he is bound to restore the money which he received as consideration for his silence. If according to what was said above, informing his master is necessary to prevent future thefts, or his duty imposes on him the obligation in justice of informing about the thief, he should be told to do his duty and return the money which he received from the thief to his master as partial restitution for the thefts.

3

A CONTRACT WITH A MODUS

Quidam catholici in quodam oppido volebant ut Ordo quidam religiosus ecclesiam in suo oppido haberet, imo pecuniæ magna summa collecta agrum emptum quo domus et ecclesia ædificarentur Ordini isti per donationem inter vivos tradebant. Episcopus vero diœcesanus quamvis primo consensum nec dabat nec negabat post agrum traditum re cum canonicis tractata consensum dare absolute recusabat, ita ut nulla spes adesset Ordinem in oppidum venturum. Quibus cognitis donatores expectabant agrum sibi redditum iri, ab Ordine tamen venditi pretium retinebatur. Unde quæritur:

1. Quid sit modus contractui additus, et quomodo a conditione distinguatur?
2. Quid sit donatio inter vivos et num revocari possit?
3. Apud quem sit dominium bonorum ecclesiasticorum et quid de eorum alienatione?
4. Quid ad casum?

Solution

1. What is a *modus* added to a contract, and how does it differ from a condition?

A *modus* is an obligation in justice to do something added to a contract, but the validity of the contract does not depend on the fulfilment of the *modus*. A condition is either precedent or subsequent. The former is an agreement that

the contract shall depend on the happening of a future event. If the happening of the future event will, according to the agreement of the parties, discharge the contract, we have a condition subsequent.

2. What is a *donatio inter vivos*, and can it be revoked?

A *donatio inter vivos* is distinguished from a gift *mortis causa* and is irrevocable by English law.

3. Who has the ownership of ecclesiastical property and can it be alienated?

According to the common opinion the ownership of ecclesiastical property is in the community to whom it was given by the donors, whether that community be the province, the diocese, the parish, a Religious order, or some other religious corporation. It can not be alienated without the permission of the Holy See under pain of excommunication.

4. The case. Some Catholics wanted a certain Religious order to come and settle in their town. They collected a sum of money, bought a site, and presented it to the order. The bishop, however, after consulting his canons, absolutely refused his permission, so that there was no hope of the order being able to come to the town. It therefore sold the site, and kept the proceeds, although those who had presented the site expected that it would be returned to them after the bishop had refused his consent.

From the answers given to the questions above, it is clear that the order acted perfectly rightly, and indeed could not without the permission of the Holy See return the site to the donors. It was given absolutely, not conditionally, with the obligation to use it if possible for a certain purpose. Through no fault of theirs that purpose became impossible, but the site remained theirs and ecclesiastical property.

4

A PROMISE

Caio missionario recenter ad aliam parochiam translato parochiani antiqui in grati animi testimonium donationem facere voluerunt. Titius, unus ex illis, congressui parochianorum quo hoc erat statutum astitit et Caii laudibus auditis permotus promisit se quinque libras sterlinas daturum. Proximo tamen die quia merita Caii tanta non videbantur, et summa pecuniæ promissa magna apparebat, consilium mutavit Titius, et nihil dare decrevit. Quia vero conscientia non fuit tranquilla totam rem in proxima confessione pandebat Julio qui Caio successerat. Interrogatus a Julio Titius asseruit se nullam intentionem habuisse se ex justitia obligandi, unde confessarius dubitare incipiebat utrum ulla stricta obligatione sub peccato astringeretur, quatenus non sub gravi quia non ex justitia, nec sub levi, quia, ut dicebat, levis obligatio cum gravi materia proportionem non habet. Priusquam responsum Titio dat rogat Julius:

1. Quid sit promissio et qualem obligationem inducat?
2. Quomodo obligatio promissionis cesset?
3. Num recte Julius sua principia applicet?
4. Quid ad casum?

Solution

1. What is a promise and what sort of obligation does it impose?

A promise is a unilateral and gratuitous contract by which one person binds himself to do something for another. The

quality of the obligation which a simple promise imposes depends on the intention of the promisor. If he intends to give the promisee a strict right to what he promised, the obligation to fulfil the promise is one of justice; otherwise it will be one of fidelity.[1]

2. How does the obligation of a promise cease?

In general a simple promise will cease to bind if some event takes place or becomes known subsequently which would have prevented the promisor from making the promise if it had been known beforehand. *A fortiori* it will cease to bind if the thing promised become impossible, wrong, or useless, or if anything happen which would suffice to discharge even a bilateral and onerous contract.

3. Does Julius apply his principles correctly?

No; he does not. The doctrine which he applies to this case has reference to the question whether there is an obligation to make restitution when grave harm has been caused by slight negligence. In that case many theologians hold that there is no obligation to make restitution because the unjust act was not perfectly voluntary, and because restitution in such a case has the nature of a penalty, and a grave penalty should not be inflicted for a slight fault. In our case the question concerns the obligation of fidelity which binds under venial sin in great as in small matters.[2]

4. The case. Titius has no solid reason for not keeping to his promise, which was made seriously after deliberation about the matter, as we must suppose. He will therefore be bound at least under pain of venial sin to give the five pounds which he promised.[3]

[1] Manual of Moral Theology, vol. i, p. 496.
[2] St. Alphonsus, lib. iii, n. 552; Lugo, De Justitia, disp. viii, n. 58.
[3] Lugo, De Justitia, disp. xxiii, n. 89.

5

A LEGACY TO THE PARISH SCHOOLS

Titia sacerdotem consuluit de suis obligationibus in his circumstantiis. Recenter maritus est mortuus qui testamento sibi ducentas libras annuas, parocho centum pro scholis parochialibus, at multo majorem partem bonorum fratri in usum nepotis carissimi reliquit. Titia vero quum sciret testes testamentarios separatim et in locis diversis testamento subscripsisse, ejus validitati oppugnabat causamque vicit. Ipsa tunc litteras administrationis obtinuit ac bona mariti distributura vult scire utrum in conscientia centum libras parocho solvere teneatur. Unde:

1. Quænam formalitates in testamento conficiendo lege Anglica requirantur?

2. Num defectus istarum formalitatum testamentum invalidum in conscientia reddat?

3. Quid requiratur ad validitatem testamenti ad causas pias?

4. Quid ad casum?

Solution

1. What formalities are required by English law in making a will?

Those formalities are laid down in the Wills Act[1]: "No will shall be valid unless it shall be in writing and . . . signed at the foot or end thereof by the testator or by some

[1] 1 Victoria, c. 26, s. 9.

other person in his presence and by his direction, and such signature shall be made, or acknowledged, by the testator in the presence of two or more witnesses, present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary."

2. Does the absence of those formalities make a will invalid in conscience?

Probably at least an informal will is not at once invalid in conscience. It may be taken as a declaration of the last will of the testator and as such acted upon. But the law may be invoked by any one who is interested to have the informal will set aside, and if this is effectively done it must be held invalid in conscience as it is in law.[1]

3. What is required for the validity of a will in favor of pious causes?

Such wills are subject to canon law, which requires nothing more for their validity than certain proof of the intention of the testator, and the verbal testimony of two witnesses is sufficient for the purpose.[2]

4. The case. The will of the husband of Titia was invalid by English law, as the witnesses did not sign in each other's presence. However, the legacy to the schools is governed by ecclesiastical law, and as there is no doubt about the intention of the testator, Titia is in conscience bound to pay the legacy. This solution has been upheld by many decrees and answers of the Roman Congregations. Thus the S. C. de P. F. gave the following answer to Cardinal Logue, April 30, 1895: "Jam vero certum est . . . legatum perdurare, quum lex civilis non possit ea quæ sunt ad causas pias sua auctoritate statuere; ac proinde legatum

[1] Manual of Moral Theology, vol. i, p. 502. [2] Ibid., p. 506.

hæredes obligat juxta tenorem et modum ipsius legati."[1] A case very like the one proposed was submitted to the S. Penitentiary and solved by it, Jan. 10, 1901: "Sacra Pœnitentiaria mature perpensis expositis, respondet: Praxis hujus S. Tribunalis in similibus casibus esse ut generatim legata pia habeantur ut valida et obligatoria in foro conscientiæ: facile tamen admittuntur hæredes ad compositionem cum Ecclesia vel pia causa, cui legatum est."[2]

[1] Irish Ecclesiastical Record, vol. xv, p. 259.
[2] Acta S. S., xxxiv, p. 384.

6

A LOST WILL

Caius ante mortem plura testamenta fecerat ut inter consanguineos bene erat notum. Cui mortuo successit in bona tum mobilia tum immobilia Titius vi testamenti ultimi quod est inventum, quamvis communiter putabatur aliud postea Caium fecisse quod tamen quum post ejus mortem non esset inventum, fuisse destructum consanguinei putabant. Titius per aliquot annos hæreditatem possederat, quum forte legenti in bibliotheca accidit ut in libro quodam testamentum Caii revera ultimum quod destructum censebatur inveniret. Quo ultimo testamento omnia bona Caii relicta erant Paulo, Titii consobrino, et inter onera quibus bona immobilia erant gravata quoddam erat solvendi debitum centum libras Sempronio, quod nunquam erat solutum eo quod Sempronius post mortem Caii debitum probare non potuerat. Titius altum silentium de testamento invento servat quoad alios, sed confessarium rogat utrum hæreditatem Paulo tradere vel debitum Sempronio solvere teneatur. Unde quæritur:

1. Quid sit executor testamenti et quænam ejus officia?
2. Quid ad casum?

Solution

1. What is an executor of a will, and what is his duty?

A will usually designates a person to whom the testator commits the execution of his last will and testament. This

person is called the executor of the will. If no executor has been appointed in the will, his place is taken by an administrator appointed by the Court. After burying the deceased the executor's duty is to prove the will in the Probate Division of the High Court of Justice. On proving the will and fulfilling the duties laid on him by law the executor receives a copy of the will of which he is the executor, and this constitutes his title to act. It confers on him the right to administer the testator's property in accordance with the terms of the will. The executor must collect the effects of the deceased, pay his debts, and then he must pay the legacies if there were any in the will.

2. The case. Titius succeeded to the estate of Caius according to the terms of the last will which was found after Caius' death. Some years elapsed before Titius discovered another and later will of Caius in a book in the library. By this really last will all the property of Caius was left to Paul, a cousin of Titius, with the exception of £100 which was a debt due to Sempronius, who had claimed the money after Caius' death, but as he had not been able to prove his debt it had never been paid. The question is: Whether Titius is bound to hand over the property to Paul and to pay the £100 to Sempronius. The answer is: No. The title of Titius is derived from the will which was proved after the death of Caius; according to that will the property of Caius was duly administered according to law, and the transaction is closed, nor can it be re-opened because of the finding of a later will after the lapse of several years.

7

SALE

Caius ædes suas satis veteres vendere volebat, prius tamen quia ut dicebat quotidie recenter fabricata tamquam antiqua magno pretio venduntur, rimas parietum interius charta nova occultabat et ope pigmenti omnia fere exterius ut tamquam nova apparerent faciebat. Postea notitiam de ædibus valde eligibilibus vendendis in ephemeride posuit, et intra breve temporis spatium Julius quidam libenter duo millia librarum pro ædibus solvit. Post aliquot tamen hebdomadas Julius ex aliorum narratione audivit quid Caius fecisset, et quamvis usibus omnibus bene ædes inserviebant, quum tamen talem domum retinere noluerit vendidit, nec plus quam mille libras pretium obtinuit. Caii catholici, quum hæc audiret scrupuli qui antea non omnino fuerant sopiti, multo aucti sunt, ac proinde in proxima confessione de toto negotio consulit confessarium. Unde quæritur:

1. Quid sit contractus emptionis et venditionis?
2. Quid sit pretium justum et quid valor rerum?
3. Quomodo contractum emptionis et venditionis et præsertim pretium afficiat error circa qualitatem rei?
4. Quid ad casum?

Solution

1. What is the contract of sale?

Sale is a contract by which the seller transfers the ownership of a certain commodity to the buyer in consideration of a fixed price.

2. What is the just price, and what is the value of things?

The just price of a commodity is the money equivalent of the value of that commodity. Value in general is the worth of a thing, and it is of various kinds. We value an old friend, we esteem his worth; this may be called esteem-value. We also value a pocket-knife for the use it has; this is called use-value. If we want to sell the knife we think of its exchange-value — what other people are prepared to give for it. This exchange-value will depend upon the social estimate of the worth of the knife in the place and at the time in question. Remotely it will depend on what it costs to produce such knives, on supply and demand, on the manner of sale, etc.[1]

3. How does mistake about the quality of a commodity affect the contract of sale and especially the price?

Mistake about a quality of a commodity which was not the motive of the contract does not make the contract invalid nor rescindable, but the price should of course be morally equivalent to the value. Mistake about a quality which was the motive of the contract does not make the contract invalid, but it may be rescinded by the buyer if he discovers that he was deceived by the seller.

4. The case. Caius, by means of paper and paint, concealed the defects of his house and sold it for twice its value. He thereby committed a sin against justice by getting more for his house than it was worth, and he is bound to make restitution for the injury to Julius, the buyer of the house. Julius might have rescinded the contract and brought an action for deceit against Caius to recover damages for any loss that he sustained by the transaction.

[1] Manual of Moral Theology, vol. i, p. 523.

8

A CONSCIENCE-STRICKEN MERCHANT

Titius mercator tempore exercitiorum spiritualium suo confessario pandit sequentia: (*a*) se ad multas negotiorum species tractandas plurima itinera via ferrea fecisse quin tesseram peteret; vel quando tesseram tertiæ classis petiisset in prima classe iter fecisse; (*b*) se vendidisse res pretio earum valorem longe excedente, quia ut ait alii mercatores idem fecerunt; (*c*) in negotiis tractandis tum exaggerando tum levia mendacia dicendo se magnum lucrum fecisse. Unde quæritur:

1. Quænam sint radices restitutionis?
2. Quænam sit regula ad justum pretium taxandum?
3. Quid ad casum?

Solution

1. See the answer to this question above, p. 270.
2. The answer to this question is given above, p. 304.
3. The case. Titius, a merchant, confessed that he had very often in the course of business traveled on the railway without paying his fare. The convenience offered by the railway has its money value, and that value belongs to the owners of the railway. Anyone who uses that convenience without paying for it and against the will of the owners takes what does not belong to him and is guilty of theft. Titius must therefore make restitution to the company for what he has stolen from it. The same doctrine *per se*

must be applied to his traveling first class with a third-class ticket, except that Titius may be excused from making restitution if and when he did this because there was no accommodation in the third class, for in such circumstances railway officials frequently put passengers in a higher class than that to which their ticket entitles them.

Titius also confessed that he had sold things for prices far above their value because others did the same. If the prices obtained were far above the highest just price, Titius sinned against justice and must make restitution. Nor does the practice of others justify him in doing what is unjust. If he can not make restitution to those whom he has injured because of their being unknown to him, Titius may make it by selling more cheaply to future buyers.

Titius also exaggerated the value of his wares and told fibs to catch a bargain. He did wrong to tell fibs, and if by doing so he got more than a just price for his goods, he must make restitution for this also. If he did not get more than the highest just price, he did not sin against justice, and he is not bound to make restitution.

9

A PURCHASE OF MODERN ANTIQUITIES

Caius dives catholicus quum novas ædes sibi ædificaret plura ornamenta (*old china, miniatures, curios*) emit sexcentis libris sterlinis. Statim venditori ducentas libras solvit, postea soluturus quod remansit. Interim tamen a perito quodam audivit plura ex dictis ornamentis esse moderna et fictitia, nec pluris omnia valere centum et quinquaginta libris. Statuit igitur reliquam summam venditori non solvere, qui tamen strenue reclamabat dicens emptorem propriis oculis res inspexisse et libere de pretio convenisse. Caius vult scire utrum tuto in conscientia stare suo proposito non solvendi possit. Unde quæritur:

1. Quid sit contractus emptionis et venditionis?
2. Quid sit pretium justum?
3. Quomodo sit interpretandum præsertim pro foro interno illud axioma juris nostri — *Caveat emptor?*
4. Quid ad casum?

Solution

1. This question was answered above, p. 303.
2. See the answer to this question above, p. 304.
3. How is the legal axiom *Caveat emptor* to be interpreted especially for the forum of conscience?

In English law the axiom *Caveat emptor* means that where an article is offered for sale and is open for inspection to the buyer, the buyer is not permitted to complain after

the bargain has been struck that the defects, if any existed, were not pointed out to him. He had the opportunity of examining the article, and he should have found out its defects for himself. In the forum of conscience also the axiom may be applied to accidental and manifest defects which ordinary inspection should have revealed. It can not be applied to substantial defects which make the article useless for the known purpose of the buyer, nor to the absence of qualities which were the motive of the contract.

4. The case. Caius paid £200 down for some old china, miniatures, and curios for his new house, and contracted to pay £400 more at a future date. In the meanwhile he learned from an expert that many of the articles were not genuine but fictitious, and not worth more than £150. He therefore refused to pay the outstanding £400, though the seller vigorously protested on the ground that the buyer had examined the articles and freely contracted to pay the sum agreed upon. Caius wants to know if he is safe in conscience in refusing to pay more than he has done.

Yes; he is. Many of the articles are not what they were represented to be, and for what he bought them, so that he would have a right to rescind the contract and claim the damages. The price that he has already paid is a very good one for the whole lot, and the seller should be satisfied with it.

10

A DISHONEST BROKER

Titius catholicus factus est proxeneta ad emendas et vendendas actiones in mercatu publico (*stock-exchange broker*). Quum negotia non succederent sicut sperasset variis modis fortunam augere conabatur. Accepto mandato ut pretio currente actiones determinatas emeret quum inter diem pretium esset varium ad clientem pretium maximum transmittebat et differentiam inter hoc et verum quo actiones emisset sibi retinebat. Quum pretium quarumdam actionum decrevisset magna quantitate eas emebat proprio nomine et postea quum pretium esset auctum magno lucro sæpe clientibus vendebat. Ut hoc negotium certius succederet articulos in ephemeridibus ponebat quibus plus æquo laudabat securitatem ac valorem istarum actionum ad emptores alliciendos. Quibus industriis res Titii melius se habebant at scrupulis conscientiæ adactus ad confessionem quum damna magna pluribus notis et ignotis sine dubio intulisset modum agendi confessario aperiebat. Unde quæritur:

1. Quales sint negotii gestoris obligationes?

2. Cuinam et qua lege restitutio sit facienda quum creditor sit incertus?

3. Quid ad casum?

Solution

1. What are an agent's obligations?

"In default of express or implied agreements to the con-

trary, the duties of an agent implied by law are: to perform the contract of agency; to observe the limits of his authority and the instructions given him by the principal, as also the customs and usages of the business in which he is employed; in all things left to his discretion to act with the most perfect good faith in the interest and for the benefit of his principal; to exercise due skill, care, and diligence, according to the nature of the business entrusted to him and the terms of the agency; to keep the money and property of his principal separate from his own; to pay over to the principal all moneys received to his use, and to account to him for all secret profits and commissions. No agent is allowed to enter into any transactions in which he has a personal interest at variance with his duty to his principal or from which he obtains any personal benefit or profit except with the consent of the principal." [1]

2. This question is answered above, p. 273.[2]

3. The case. Titius, a stock-broker, on getting an order to buy a certain stock at the current rate, debited the highest price that ruled on the day in question to his client and pocketed the difference. In doing this he clearly committed an act of injustice, since he was bound to act for his principal, not for himself. He must restore his ill-gotten gains.

In buying stock on his own account when the price sank and selling afterward to his clients at a profit when the price rose, he acted within his rights, provided that he always sold at the current price. But when he unduly puffed such stock in the press in order to attract buyers and raise its price, and thereby caused loss to many, both known and unknown, he acted unjustly, and for this he is

[1] Manual of Moral Theology, vol. i, p. 545. [2] Cf. Ibid., p. 424.

bound to make restitution. For to hold oneself out as an expert and then give damaging advice to clients for one's own benefit is fraudulent and unjust. If Titius can not succeed on the stock exchange by honest means, he should try some other occupation.

11

A SECRET COMMISSION

Titius navarcha appulit portum quemdam in Anglia ad carbones fossiles pro navis usu obtinendos. Statim ac portum intravit ecce litteræ ad eum mittuntur quæ continent decem libras in tesseris argentariis a quodam mercatore carbonum, qui petit ut ipsi favere velit quum optimos carbones ipsum habere nec majore consueto pretio vendendos affirmet. Quamvis bene sciverit Titius pecuniam non omnino gratis esse datam, imo sine dubio pretium carbonum exinde aliquomodo augeri, ex eo tamen quod fere omnes ita agant pecuniam accepit, et se carbones a mercatore empturum significavit. Quum vero esset catholicus nec de pecunia accepta omnis scrupuli expers, ad confitendum ivit et conscientiam confessario aperuit. Hic vero dubitat utrum Titius pecuniam accipiendo peccaverit, vel utrum et cui restituere teneatur. Hinc quæritur:

1. In contractu emptionis et venditionis quid sit justum pretium et quomodo statuatur?
2. Quænam sint proxenetæ obligationes?
3. Quid ad casum?

Solution

1. This first question is answered above, p. 304.
2. This question is answered on p. 309.
3. The case. The captain of a ship went to a certain port to coal. In port he received £10 in notes from a coal

merchant asking for the privilege of supplying him with excellent coal at the usual prices. The captain knew that the money was not a pure gift and that somehow the coal merchant would take it out of the coals, but he accepted the money, as everybody else did the same, and asked the merchant to supply him with coals. However, he was not without scruples and mentioned the matter in his next confession.

Titius can perhaps be excused from a sin against justice. The merchant without doubt had a right to make a reasonable profit on the transaction, and if the £10 which he gave to Titius came out of that profit, and the coal supplied was not deficient in quality or quantity according to the ordinary standard, neither party committed sin, and Titius may keep his secret commission. Titius, however, by taking the money made it difficult for himself to insist on the proper quantity and quality of coal being supplied, and if in fact the coal was deficient in either way, both parties sinned against justice and are bound to make restitution to the owners of the ship who were defrauded.

12

A PROPOSED MONOPOLY

Julius catholicus sacerdos quum magna pecuniæ summa emisset actiones in quadam societate quæ saponem fabricavit accepit nuntium certo die fore discutiendum a sociis utrum novo monopolio saponis sese societas adjungeret. Ordinarie quidem nullam partem activam in negotiis societatis sumit Julius sed vellet scire utrum suffragium dare teneatur contra propositum quatenus plura in ephemeridibus contra monopolium scribantur, at speciatim illud vendere quindecim uncias saponis loco sexdecim, plures officiales jam esse dimissos utpote non necessarios, et suspiciones magis injuriosas non esse sine fundamento spectatis iis quæ de monopoliis in America audimus. Unde quæritur:

1. Num liceat clerico negotiari?
2. Quid sit monopolium et num sit licitum?
3. Numquis ab actione abstinendo contra justitiam peccare possit?
4. Quid ad casum?

Solution

1. Is a cleric allowed to trade?

No; a cleric is forbidden by ecclesiastical law to trade in the strict sense; that is, to buy commodities with the intention of selling them unchanged for profit. It is probably not unlawful for clerics to have shares in indus-

trial companies, provided that they do not take an active part in the business, *e.g.*, as directors.[1]

2. What is a monopoly, and is it allowed?

A monopoly is the exclusive right belonging to one or to a certain number to sell some commodity. A monopoly is not morally wrong, provided that there is nothing reprehensible in the method of conducting business and the prices are fair and reasonable.[2]

3. May a sin against justice be committed by simply abstaining from action?

Yes; such negative co-operation is a sin against justice whenever one's office or duty require one to prevent an unjust action.

4. The case. Julius, a priest, bought shares in a soap company. One day he got notice of a meeting to be held by the shareholders to decide whether the company should join a new monopoly of soap-makers. Julius was not clear as to whether monopolies are wrong and whether he was not bound to vote against the proposal.

From what has been said it is clear that monopolies are not necessarily immoral if prices are fair and if there is nothing wrong in their business methods. Hence it is a question of fact in each case. The soap monopoly sold fifteen ounces of soap for sixteen. If this was publicly known and the price was reasonable, there was nothing immoral in this. Several officials had been dismissed as unnecessary. This, too, might have been perfectly lawful. Suspicions resting on what some monopolies and trusts are sometimes guilty of can not afford sufficient ground for condemning all monopolies. Julius should make inquiries about the directors of the monopoly and

[1] Manual of Moral Theology, vol. i, p. 616. [2] Ibid., p. 535.

its methods of doing business, and if he finds nothing objectionable, he will not be bound to vote against the proposal. If he does find anything objectionable, he will be so bound, for the shareholders are responsible for the acts of the company which does business in their name and for their benefit. If the monopoly is formed, Julius should keep an eye on its business methods, and if he discovers anything unjust or uncharitable in them, he should endeavor to correct it, or withdraw from the company.

13

METHODS OF MONOPOLIES

Titius ditissimus catholicus vult scire utrum liceat pecuniam collocare apud societatem maximam quæ audit "Trust" seu "Combine." Hoc autem modo tales societates procedere solent: — Expensas minuunt directionis quatenus unus plurima centra negotiationis dirigere valet, expensas minuunt etiam portationis quatenus ex plurimis centris magis vicinum semper eligi potest; quibus aliisque mediis diminutis expensis minori pretio quam alii vendere possunt. Ita sat brevi tempore totam negotiationem in aliqua materia in loco ubi sedes figunt comparant, nam æmuli aut negotiari cessant aut societati se associant quæ sola relicta pretium quo res vendantur statuere ipsa potest. Quando negotiationem unius civitatis sunt adeptæ similibus modis aliam aggrediuntur ac cito omnes æmulos vincunt. Unde quæritur:

1. Quid sit monopolium et quatenus sit licitum vel illicitum?
2. Quid sit justum pretium rerum et unde dignoscatur?
3. Quid ad casum?

Solution

1. This question is answered above, p. 315.
2. This question is answered on p. 304.
3. The case. Titius, a rich Catholic, wants to know if he may put his money into a trust or combine. The com-

bines lessen working expenses and are thus able to sell cheaper to the public. There is no moral difficulty in the question so far. Even if by selling cheaper they may drive competitors out of the trade, still as the public good is to be preferred to that of individual tradesmen, there is no moral objection to their action. However, when a trust comes into a place and begins to undersell competitors with the intention of driving them out of the trade or of compelling them to join the trust, and when it has conquered all competitors, of raising prices to as high a figure as is safe, there is at least a sin against charity. For it is against charity to use the greater economic power of a combine to ruin or to coerce rivals. If the prices at which the combine sells after it has acquired a monopoly in a place are higher than would prevail if the combine had not driven competitors out of the field, its action is also against justice.

14

A PROPOSED CORNER IN WHEAT

Caius ditissimus frumenti mercator adhuc ditior fieri cupit. Unde alios divites rogat ut collatis pecuniis omne frumentum quod in mercatu sit si fieri possit emant, ut postea illud carius vendant, ac inde summam ingentem lucrentur. Julius catholicus inter alios rogatur ut pecuniam negotio contribuat, qui quidem consentit brevi pœnitentiam acturus, nam pretium frumenti quidquam agant conspiratores paulatim decrescit et Julius summam contributam perdit. Venit postea ad confessionem cujus confessarius dubius de ejus obligationibus petit:

1. Quid sit monopolium?
2. Num et quare sit monopolium illicitum?
3. Quid ad casum?

Solution

1. This question is answered above, p. 315.
2. This question is answered on p. 318.
3. The case. Caius, a rich merchant, wished to make a corner in wheat and asked some other rich men to join him. The intention was to buy up all the wheat available, and then sell it at a higher price. Such an intention is at least uncharitable, for if the attempt succeeds it produces widespread hardship and disaster. If the prices demanded by the monopoly are higher than are fair and reasonable and than what would rule if there were no monopoly, the

monopoly is also against justice, and entails the obligation of making restitution to those whom it has injured.

Julius therefore committed sin by joining the would-be monopolists. However, as they did not succeed in their design it was only a sin of intention, and Julius may be absolved if he is sorry for what he has done and firmly resolves never to do the like again.

15

GAMBLING IN "FUTURES"

Titius mercator frumentarius judicium sui confessarii rogat de liceitate cujusdam modi agendi haud infrequentis inter mercatores. Juxta Titium igitur mercatores frequenter emunt et vendunt frumentum pretio quodam statuto ad certum diem futurum quin tamen ullo modo intendant frumentum tradere, sed tantum differentiam solvere inter pretium statutum et pretium quo in mercatu venditur frumentum quando dies advenerit. Deinde haud infrequenter plures mercatores pactum quoddam ineunt ita ut quando dies determinatus appropinquat si velint pretium mercatus crescere maximam quantitatem inter se dicto modo emant, si velint pretium decrescere maximam quantitatem eodem modo pretio diminuto vendant. Cujus rationis agendi effectus est ut pretium revera crescat vel decrescat juxta suam voluntatem. Imo quando hoc modo agendi pretium decrevit, maximam quantitatem frumenti pretio diminuto emunt non ficte sed realiter, et quando propter talem emptionem pretium crevit, iterum illud vendunt maximum lucrum reportantes. Unde quæritur:

1. Quæ conditiones requirantur ut sponsio sit honesta?
2. Num et quomodo peccent qui conspirent ad pretium alicujus rei augendum vel minuendum?
3. Quid ad casum?

Solution

1. What conditions are required that betting may be permissible?

The bet must not be an incentive to sin; the object of the bet must be uncertain for both, at least in the sense that neither may influence events in his own favor, and both must understand the bet in the same sense and be prepared to stand by the issue of the event. Moreover, what is staked must be at the free disposal of him who bets.[1]

2. Do those who conspire together to raise or lower the price of a commodity commit sin, and how?

If a fair and reasonable price can not be got for a commodity by leaving the sale to competition, there is no harm *per se* in conspiring together so that a fair price may be obtained. This holds of combinations of both buyers and sellers of the commodity; the buyers may combine to lower the price, the sellers to raise it, until a fair, and reasonable, price is secured. If prices are already fair, and reasonable, it is at least uncharitable to strive by combination to influence the market in one's own favor to the damage of others; it will be against justice if by combination prices are altered so as to be unfair and uncharitable.[2]

3. The case. Titius, a corn merchant, asks if it is wrong to deal in "futures," "time bargains," or "differences." In itself such dealing is betting on the future price of some commodity; it is not clear that it does harm to genuine buying and selling of commodities, and so it will not be wrong if the conditions laid down above for the lawfulness of betting are fulfilled. "Bull" and "Bear" transactions, as they are called, are designed to influence the market in favor of the operator, and they are immoral except as means of self-defence against aggression. To endeavor by artificial means to lower the market price when it is fair and

[1] Manual of Moral Theology, vol. i, p. 560. [2] Ibid., p. 536.

reasonable, with the intention of buying in at a low rate and afterward selling at a higher, is wrong and unjust. Apart from this, there would be no harm in buying at the current rate when prices are low with the intention of selling out at a profit when they rise.[1]

[1] Manual of Moral Theology, vol. i, p. 560.

16

LIABILITY OF DIRECTORS

Caius nobilis anglus et catholicus rogatur a Julio societatum commercialium et industrialium promotore ut nomen det tamquam director novæ cuidam societati a se promovendæ. Quum Caius de rebus istius societatis nihil prorsus cognoscat, nec discere intendat, ignorantiam suam Julio detegit, qui tamen negat ignorantiam ullo modo impedire quominus director fiat, quum plurimi ducti nomine nobili directoris societatibus pecuniam contribuere soleant; quinimmo offert Caio quinque millia librarum si nomen dare consentiat. Petit Caius tempus deliberandi, ac interim confessarium de negotii liceitate consulit. Unde quæritur:

1. Quid sit contractus societatis?
2. Quænam sint obligationes directorum societatum?
3. Quid ad casum?

Solution

1. What is the contract of Partnership?

Partnership is the relation which exists between persons who carry on business in common with a view to profit. By English law any persons may enter into such a partnership, provided they do not exceed twenty in number, or ten in the case of a banking business. The partners retain their individuality, and each partner is an agent for the rest in the matters relating to the partnership. If seven or more people wish to form a company, they subscribe their names

to a Memorandum of Association and procure registration by the Registrar of Joint Stock Companies. Thereupon the members become a body corporate, a legal personality, which has rights and obligations distinct from those of the members. Modern companies are usually formed with limited liability, so that the individual members are liable for the company's debts only to the extent of their shares in its capital.

2. What are the obligations of company directors?

Directors are those appointed to manage the affairs of a company. They are the company's agents for the transaction of its business, and they should have the knowledge, capacity, integrity, and diligence required for such a position. Those who subscribe to the capital of the company are frequently led to do so by seeing the names of capable and honest men among the directors. Hence the liability of directors both in the forum of conscience and of law. English law makes directors in general liable for false statements in the company's prospectus, for violation of duty, and for gross negligence of duty.

3. The case. From what has been said it is obvious that Caius can not allow himself to be made a director of the future company without knowing more about it. The promoter wishes to use him as a decoy, and if he allows him to do so, he will be responsible for the loss inflicted on shareholders if the company turn out to be unsound. Caius must therefore either satisfy himself that the proposed company is a sound and honest enterprise, or he must refuse to allow himself to be made a director.

17

USURY

Caius fœnerator catholicus qui dubitat de suo modo negotium transigendi consulit confessarium et dicit se idem interesse ac alii exigant petere, quod quoad pauperes qui non raro paucos shillingos mutuentur ad necessitates quotidianas sublevandas ea lege statui ut solvant unum denarium pro singulis shillingis mutuatis per hebdomadam. Quum vero recenter Caius legerit in ephemeride istud interesse esse omnino usurarium et injustum quærit a confessario quid sit faciendum. Unde quæritur:

1. Quid sit usura et qua lege prohibeatur?
2. Num interesse aliquod juste exigi possit pro mutuata pecunia et quantum et quo titulo?
3. Quomodo concilientur praxis antiqua et hodierna in hac materia?
4. Quid ad casum?

Solution

1. What is usury and by what law is it forbidden?

Usury is forbidden by natural, divine, and ecclesiastical law. The sin was defined by Benedict XIV in his encyclical letter *Vix pervenit* in these terms: "The sin which is called usury consists in this, that from the loan for consumption (which of its own nature requires that only so much as was received should be returned) the lender desires more to be returned to him than the borrower received, and therefore contends that some gain over and above the principal is due to him merely on account of the loan." If we accept

the theory of many modern theologians and say that in our capitalistic society money is no longer a fungible but an instrument of production, we must say that usury in the strict sense is not committed now by taking interest on money loans, but the name may be used to designate the sin which is committed by exacting excessive interest.

2. May interest be justly exacted for a money loan, how much, and by what title?

Yes; interest may now in our capitalistic society be exacted for a money loan, as money is now virtually an instrument of production and no longer merely a fungible. The amount which may be exacted must be fair and reasonable in the judgment of prudent men.[1]

3. How can the old and the modern practice of the Church be reconciled in this matter?

By the economic, industrial, and political changes which make modern society so different from former ages.[2]

4. The case. The interest charged by Caius on his loans to the poor is 433.3 per cent per annum. This is altogether excessive and extortionate. There may be considerable labor and trouble involved in collecting such small debts, and especially when the debtors so easily and so frequently change their places of abode. In some cases also there may be great risk of losing the principal. For these reasons, although charity might require that the poor should be helped gratuitously, yet a sin against justice would not be committed by exacting a high interest when circumstances justify it. It might rise to 20, 40, or 60 per cent per annum. But over 433 per cent per annum seems altogether extortionate and unjust.

[1] Manual of Moral Theology, vol. i, p. 516. [2] Ibid., pp. 515 ff.

18

LIFE INSURANCE

Titius vitam assecurabat apud societatem quamdam et *the policy* uxori assignabat ut in casu suæ mortis haberet unde se et filios sustentaret. Interrogatus autem nomine societatis de ætate dicebat se 36 annos habere dum revera 38 habebat. Accidit vero post quinque annos ut Titius infortuniis oppressus propter melancholiam ebrietati indulgens in puteum prolapsus mortuus sit. Quum societas assecuratoria nihil sciret de mendacio circa ætatem nec de ebrietate quæ causa fuerit mortis quingentas libras uxori incunctanter solvit. Uxor vero dubitabat utrum pecuniam retinere posset. Unde quæritur:

1. Quotuplex sit species contractus assecurationis?
2. Quænam sit vis conditionum quæ assecurationi apponi soleant?
3. Quid ad casum?

Solution

1. How many species of the contract of insurance are there?

There are three: Marine, Fire, and Life insurance.[1]

2. What is the force of the conditions which are usually annexed to insurance policies?

The effect of such conditions depends upon the intention of the parties to the contract, and in the case of insurance

[1] Manual of Moral Theology, vol. i, p. 554.

companies in general it is difficult to say what the intention is. The chief difficulty is to distinguish when the contract is absolutely null and void, so that no rights are conferred by it, and when it is only voidable at the option of the insurer. In general it may be said that if there were substantial mistake in the contract, it is null and void; if there were only accidental mistake, it is only voidable. Mistake will be substantial when the insurer did not intend to contract on the basis which in fact exists; it will be accidental when a full knowledge of the facts would not have prevented him from entering into the contract, but would only have varied its terms.[1]

3. The case. Titius insured his life and assigned the policy to his wife. He gave his age as 36, whereas it was 38. The policy would not be void on this ground. The only effect of the truth being told would be to raise the amount of the premium. After five years Titius took to drink on account of misfortunes, and while in drink killed himself by falling into a well. The insurance company knew nothing about the lie nor about the cause of Titius' falling into the well, and paid the insurance money. In insurance policies there is usually a suicide clause, but even suicide does not usually void the policy, especially when it has been assigned to another. A recent authority says: "Suicide of the assured was originally a reason for the avoidance of the policy. But even then, if the assured had *bona fide* assigned his policy and notice of the assignment had been given to the company before the suicide had taken place, the assignee would be entitled to the assurance money. And this is the law to-day, and can be relied upon in the event of the death of an assured by his own hand under such circumstances

[1] Manual of Moral Theology, vol. i, p. 555.

that his suicide is exempted from the risks assured against, provided of course that it is a *bona fide* assignee who makes the claim. But the modern practice of life assurance is either to make no distinction at all in the case of suicide, or to make only some limited or temporary distinctions."[1] The wife of Titius may therefore keep the money she has received from the insurance company. Titius should indeed have paid higher premiums than he did, in consideration of his being two years older than he said he was. The company will have the right to deduct the difference from the sum paid if it comes to know the real age of Titius.

[1] Knight, Business Encyclopædia, *s.v.* Life Assurance.

19

A DOCTOR'S PREDICAMENT

Lucius medicus confessarium rogabat quid a se esset in his circumstantiis faciendum. Caius operarius machinæ cujusdam periculi plenæ conductus a Titio curam gerebat. Quodam die Caius incaute os applicuit valvæ in machina quam tangere instrumento ad hoc dato tantum debebat. Explosio violenta secuta grave vulnus Caio infligebat ita ut mox moreretur. Ante mortem soli Lucio causam explosionis detexit, ne societas assecuratoria de illa audiret ac summam mille librarum pro qua vita erat assecurata uxori aliis sustentationis mediis destitutæ denegaret. Quod revera accidit; nam quia suspicabatur negligentiam aliquam Caii intervenisse solvere pecuniam recusabat, et uxore Caii actionem contra societatem in curia civili intentante Lucium testem societas citabat. Unde quæritur:

1. Quid sit contractus assecurationis?

2. Num et quandonam secretum commissum revelari possit vel debeat?

3. Num testis unicus in curiis interrogatus quod solus sciat manifestare teneatur?

4. Quid ad casum?

Solution

1. What is the contract of insurance?

In a contract of life insurance, with which we are here concerned, the insurer undertakes to pay a given sum to another upon the happening of a particular event contingent

upon the duration of human life in consideration of the immediate payment of a smaller sum or certain equivalent periodical payments.[1]

2. May a professional secret be revealed, or ought it to be revealed, and when?

Professional secrets may and ought to be revealed when this is necessary to avert serious harm to the public weal, and also when the person whose secret is in question is abusing it to cause serious harm to an innocent person.[2]

3. Is an only witness who is examined in court bound to give evidence on what he alone knows?

In canon law the axiom held — *Testis unus testis nullus.* However, in English law, as in most modern systems, a solitary witness is admitted as sufficient evidence of a fact, and so an only witness, if interrogated, will be obliged to give evidence, unless there is some reason to the contrary.[3]

4. The case. If Lucius knew how the accident happened from other sources than from Caius himself, as, for example, from his examination of Caius' wounds, or from other informants, he will be bound to state it when required in court to do so. If the only source of his knowledge was the communication made under secrecy by Caius himself, he should say that he does not know how the accident happened, if he is asked about it. It would then be a professional secret, which he is not bound to reveal in the circumstances of the case before us. Caius was not guilty of fraud; he was only thoughtless, and his wife may take the insurance money if she can get it.

[1] Manual of Moral Theology, vol. i, p. 554.
[2] Ibid., p. 472. [3] Ibid., p. 595.

20

A FRAUDULENT INSURANCE

Titius mercator supellectilis ficte antiquæ res suas quæ fortasse valent mille libris assecurat terminis consuetis apud societatem assecuratoriam pro librarum decem millibus. Hæc vero societas reassecurat dimidiam partem rerum apud aliam societatem et partem quartam apud tertiam societatem. Paulo post res assecuratæ incendio percunt, et Titius sibi gratulabundus decem millia librarum a prima societate recepit. Postea tamen dubitabat utrum juste receperit, nam quamvis premium, ut dicitur, solverat summæ receptæ proportionatum, tamen hæc superat rerum valorem. Hinc confessario dubium exposuit ut suas obligationes cognosceret. Unde quæritur:

1. Quid sit contractus assecurationis et in quibus rebus ordinarie ineatur?

2. Quænam sint conditiones ordinarie in Anglia annexæ huic contractui, vel expresso consensu partium, vel lege, vel consuetudine?

3. Quid ad casum?

Solution

1. What is a contract of insurance, and what is its ordinary subject-matter?

Marine, Life, and Fire insurance are the general types of this contract, but nowadays most risks can be made the matter of insurance. The contract of Fire insurance, with which we are here concerned, is one of indemnity in con-

sideration of a premium paid by the insured, against loss, not wilful, caused by fire, to a given account, upon certain subjects.

2. What are the conditions ordinarily annexed to this contract in England, either by the express consent of the parties, by law, or by custom?

This contract is usually effected on the basis of a proposal containing a list of questions which must be truthfully answered by the insured. Everything that can enable the insurer to arrive at an estimate of the risk insured against must be disclosed. The property insured, its value, locality, and whether it is insured with other companies, must be indicated. If any change is made which increases the risk, it must be made known to the company. On any loss to the goods insured being incurred by fire, the insurer must make a particular statement of the details of his loss, with an estimate of the value, confirmed if required by a statutory declaration of the truth of the account.[1]

3. The case. Titius, an old curiosity dealer, insured his goods for a sum ten times their value. In this he was guilty of fraud; the company had no intention of contracting with him to pay such a sum. He has no right to keep more than what covers his loss, and he must make restitution in some way to the company from which he obtained the money. This company will then be under the obligation of squaring accounts with the other companies which took part of the risk. Titius may deduct from the sum to be restored the difference between the premiums which he paid and those which he should have paid on the real value of the property insured.

[1] Knight, Encyclopædia, *s.v.* Fire Insurance.

THE EIGHTH COMMANDMENT

1

ESSENCE OF A LIE

Titius religiosus non raro occupatur in verbo Dei prædicando et in missionibus populo tradendis. Ad monasterium reversus mirabilia narrare solet fratribus de visis et auditis a se dum extra monasterium versaretur. Fere omnia tamen sunt prorsus fictitia a Titio excogitata et prolata ut æstimationem sui apud fratres augeat eosdemque delectet. Sine scrupulo etiam fingit causas excusantes ut longius extra monasterium remaneat eisque superiorem placat. Acriter tenet se non mentiri ita agendo quum nemini noceat et essentia mendacii in violatione juris alieni ad veritatem consistat. Unde quæritur:

1. Quid et quotuplex sit mendacium?

2. In quo malitia mendacii consistat et num unquam mentiri liceat?

3. Quid ad casum?

Solution

1. What is a lie, and how many sorts of lies are there?

A lie is a speech against one's mind. Lies are divided into jocose, officious, and hurtful lies.[1]

2. In what does the malice of a lie consist, and is it ever lawful to lie?

Some would put the malice of lying in the denial to

[1] Manual of Moral Theology, vol. i, p. 464.

others of that to which they have a right. Others would say that it lies in the deceit practised on others. The common Catholic teaching follows St. Thomas in putting it in the disorder which is intrinsically in saying that which is known to be false. We have from nature the power of communicating our thoughts to our fellow men, and this power is necessary for a social being like man. Those thoughts which are to be communicated to others should be communicated truthfully, and there is a perversion of right order, if this is not done; the virtue of veracity is violated. As lying is intrinsically inordinate and wrong, it is never allowed to tell a lie.[1]

3. The case. Titius, a Religious, frequently goes out of the monastery to preach. On his return he has wonderful things to tell the brethren, but for the most part, they are pure fabrications, invented to amuse his brethren and to add to his own reputation. He says he does nobody any harm by these tales, and that therefore he does not lie. Titius is wrong. Hurtful lies are not the only species; there are also jocose and officious lies, and Titius is guilty of jocose and officious lying. He says what he knows to be false, and he says it with the intention of deceiving others, or else there would be no prospect of his lies adding to his reputation. Much more is this the case when he invents reasons to be laid before the superior in order to excuse himself for making a longer stay than necessary out of the monastery. In this he is guilty of officious lying. He is also imperceptibly lessening his own estimation of the virtue of truth, and accustoming himself to trifle with it.

[1] Manual of Moral Theology, vol. i, p. 465.

2

A PROFESSIONAL SECRET

Titius advocatus catholicus confessarium in sacro tribunali rogabat utrum teneretur impedimentum matrimonii occultum revelare in his circumstantiis. Banna fuerunt recenter proclamata de matrimonio mox incundo inter Julium et Juliam. Titius vero fuit recenter a Julio consultus de summa pecuniæ assignanda proli suæ sustentandæ ex occulta fornicatione cum sorore Juliæ progenitæ. Unde confessarius quærit:

1. Quid et quotuplex sit secretum?
2. Num et quanam ex causa secreta revelare liceat?
3. Qualem obligationem bannorum proclamatio inducat?
4. Quid ad casum?

Solution

1. What is a secret, and how many sorts of secrets are there?

A secret is some hidden matter concerning another, which can not be made known without causing him injury or displeasure. Besides the secret of the seal of confession, which is treated of elsewhere, divines distinguish three kinds of secret: the natural secret, the promised secret, and the secret which is communicated under an express or implied contract of secrecy.[1]

2. May secrets be revealed sometimes, and for what cause?

[1] Manual of Moral Theology, vol. i, p. 470.

Natural and promised secrets may be revealed when the public good requires it, or when an innocent person can not otherwise be defended. Even professional secrets may be revealed when the public weal would otherwise suffer seriously, and when he whose secret is in question abuses the privilege of secrecy to do harm to an innocent person.[1]

3. What sort of obligation is imposed by the proclamation of banns?

A grave obligation is imposed of disclosing to the priest any known impediment of the marriage. Even if the impediment be known under natural or promised secrecy, the obligation to disclose it will arise. It will not arise usually if the secret be of the third and stricter kind.[2]

4. The case. Titius, a Catholic lawyer, wishes to know whether he is bound to make known to the parish priest the diriment impediment of affinity in the first degree in the collateral line which in his professional capacity he has learned exists between Julius and Julia, who are going to be married. No; he should not tell the parish priest, as the matter is a professional secret, but he should take an opportunity to warn Julius about the impediment, if Julius does not know of it, so that a dispensation may be applied for in time before the marriage.

[1] Manual of Moral Theology, vol. i, p. 471 f. [2] Ibid., p. 265.

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3

A PUZZLED DOCTOR

Some years ago "Whole-time medical officer of health" wrote to the *British Medical Journal*, asking what he was to do in the following case: "A medical practitioner has consulted me under the following circumstances: He is attending a railway signalman for asthma. The attacks come on suddenly and are so severe that the patient falls on the floor, struggling for breath, and is totally incapacitated for an hour or longer. He has not yet had an attack in his signal-box, where he is on duty alone, sometimes for many hours at a time. The man declines to inform the railway company of his illness, thinking it would result in his discharge, or at least reduction of wages. The doctor is afraid that if he reports the case to the railway company who are not his employers, and therefore not entitled to a report from him, he will have to stand an action for damages brought against him by the patient. On the other hand, he fears that unless he breaks the seal of professional secrecy, there will probably be a railway accident, possibly on a large scale, as many London and other expresses traverse the line."

Solution

We must take the facts of the case as stated. The signalman's complaint might at any time make him incapable of attending to his duties, and in the doctor's opinion

there would probably be a big accident. The signalman had no right to continue at his post to the public danger; under the circumstances he was unfit to hold the post, as he could not, with reasonable certainty, guarantee that he would be able to fulfil its duties. His refusal to tell his employers threatened injury to them and to the public. In such a case the obligation to preserve even professional secrets ceases, and charity obliges anyone who is acquainted with the facts to make them known in the proper quarter. The doctor should therefore inform the company that the man is unfit to be left alone at his post. The rights of the public must be safeguarded, even at the expense of the individual.

4

A SYPHILITIC PATIENT

Titius sponsalia cum Caia inierat, quod quum Julius medicus familiæ utriusque et Caiæ patris amicissimus audisset, dubiis conscientiæ erat cruciatus. Nam sub secreto consilii scivit Titium morbo syphilitico laborare qui certo certius uxorem futuram sit infecturus, unde incertus erat utrum posset vel deberet patri Caiæ conditionem Titii revelare necne. Consilium ergo petiturus confessarium bonus catholicus adiit. Unde quæritur:

1. Quid sit secretum et qua obligatione celandum?
2. Num et quando secretum revelare liceat vel etiam sit obligatorium?
3. Quid ad casum?

Solution

1. This first question is answered on p. 337.
2. This question is answered on p. 338.
3. The case. While Titius is suffering from his disease, he can indeed marry, but he should not use marriage rights until he is cured, or at least without the consent of his wife after telling her about his state. In these circumstances Julius has no right to tell Caia's father about the disease from which Titius is suffering. As he is the family doctor he may and should tell Titius either to defer marriage, or at least not to use his marital rights, for a time until he is cured.

5

A BLACK SHEEP IN THE FOLD

Julius puer in collegio quodam educandus quodam die ad Caium magistrum accessit et petiit ut sub secreto eum consuleret. Consentienti Caio Julius indicabat alium puerum in collegio pessimum qui ceteros docendo peccatum quoddam et crimen gravissimum eos corrumperet. Caius respondit Julium teneri ad istum puerum superioribus denunciandum, qui tamen negat se id vel quidquam aliud quod in periculum puerum adduceret facturum. Caius quum nihil cum Julio proficeret de propriis obligationibus in casu cogitare incepit. Unde quæritur:

1. Quid sit secretum et qualis ejus obligatio?
2. Num secretum revelare liceat et aliquando sit obligatorium?
3. Quid ad casum?

Solution

1. This question is answered on p. 337.
2. This question is answered on p. 338.
3. The case. The only way of preventing very serious harm being done in the future among the boys of the college is to denounce the bad boy to the authorities. Julius is bound to do this in the first place, but he refuses to do his duty. Under these circumstances the public good requires that Caius should undertake the task. The obligation even of a strict secret ceases in such circumstances. Caius should therefore inform the authorities about what he has heard from Julius.

6

READING ANOTHER'S LETTERS

Caia catholica sæpe arguit Caium maritum protestanticum de nimia ejus familiaritate cum Bertha quæ filios eorum in primis elementis instituit (*governess*). Tandem aliquando justis suis querelis procurat Caia ut Bertha e domo et occupatione dimittatur. Paulo post observat Caia epistolam manu Berthæ scriptam cum aliis ad Caium mane allatam. Quam illa clam surripit et apertam et lectam in ignem conjicit. Postea tamen ad conscientiam pacandam rogat confessarium utrum ita agendo peccaverit necne. Unde quæritur:

1. Quid sit secretum et quomodo dividatur?
2. Num liceat alienas litteras aperire et legere?
3. Quid ad casum?

Solution

1. This question is answered on p. 337.
2. Is it lawful to open and read another's letters?

As a general rule it is not, and it will be more or less against justice if the letters contain secrets which the owner of the letters is rightly unwilling that others should know. The gravity of the sin will depend on the seriousness of the injury or offence done by opening the letters. They may, however, be opened for good reason by the authority of the State, and by private persons to protect their own rights if they have a well-grounded suspicion that those rights are imperiled.[1]

[1] St. Alphonsus, lib. v, n. 70.

3. The case. Caia had good grounds for objecting to secret communications between the late governess and her husband. She did not therefore commit a sin when she opened Bertha's letter; she was justified in protecting her rights. It must be presumed that there was something objectionable in the letter to cause Caia to throw it into the fire. She need have no scruples of conscience now on what she had done.

7

PRIVILEGED SECRETS

ALBERTUS medicus catholicus consulit Caium sacerdotem de obligatione secreti servandi; dicit enim recenter rem esse inter medicos valde agitatam nec inter se omnes convenire. Dum enim, inquit, alii dicunt feminam quæ ad abortum procurandum medicum consuluisset esse apparitoribus denunciandam, alii e contra asserunt nunquam secretum alicujus clientis sanæ mentis ulli esse manifestandum sine ejus consensu, et ipsi judices civiles dubitant utrum medicus tanquam contumax esset puniendus qui in judicio recusaret secretum sibi commissum manifestare. Unde vult Albertus scire doctrinam catholicam de secretis servandis; et nominatim utrum possit vel teneatur denunciare feminam quæ ab ipso petiisset medicinam qua abortum procurare posset. Unde quæritur:

1. Quænam sint variæ species secreti?
2. Num et quando singula secreta manifestari possint?
3. Quid statuat de hac re lex municipalis nostra?
4. Quid ad casum?

SOLUTION

1. This question is answered on p. 337.
2. This question is answered on p. 338.
3. What does English law lay down on this matter?

"Professional communications between counsel, solicitors, or their clerks, and their clients, made in confidence,

can not be disclosed without the client's consent, nor can a client be compelled to disclose any communication made in confidence to his professional adviser." [1] It is said that the case of privilege does not extend beyond the persons here mentioned, but doubts have been expressed in court whether doctors and clergymen can be compelled to disclose what has been told them professionally in confidence. Moreover, "a witness can not be asked, and will not be allowed to state, any facts, or to produce any documents, the disclosure of which may be prejudicial to the public interest, *e.g.*, in the case of some high documents of State." [2]

4. The case. Whatever English law may say on the matter, in the forum of conscience a doctor may not denounce to the authorities a woman who has asked him to give her medicine to procure abortion. Her criminal intention is only known to him as a professional secret, and such a secret he should faithfully keep when it refers to a past act. He should tell the woman what a crime she is guilty of in intention at least, and do what he can to deter her from committing it. He may threaten to inform against her if she attempts it, and if he can not prevail on her to give up the idea of procuring abortion, he will be justified in informing those who can prevent it, and even the public authorities, as there is question of saving the life of the innocent child which is threatened by the person whose secret is in question. In those circumstances the right to the secret lapses.

[1] Indermaur, Principles of the Common Law, p. 471.
[2] Ibid., p. 476.

PRECEPTS OF THE CHURCH

1

A SOLDIER'S DIFFICULTIES

Caius centurio militum Britannicæ militiæ (vulgo Officer of Militia) et catholicus, qui ordinarie curam gerit amplissimi negotii, difficultates est haud semel expertus quoad obligationes jejunii et abstinentiæ. Robustæ valitudinis multum est deditus venationi, et quando a negotio recenter liber fuit venationi indulsit die jejunii quin tamen jejunaret; alio die veneris fuit invitatus ad prandium solemne cohortis regularis cui propria cohors militiæ est annexa, quam invitationem acceptavit, nec abstinentiam observavit. Denique quadragesima præterita obtinuit dispensationem a lege jejunii, non semel tamen accidit ut illis diebus quibus carnes ex indulto in refectione principali jejunantibus permittebantur ipse bis vel etiam ter carnes comederit. Postea tamen stimulis conscientiæ motus confessarium rogavit utrum recte fecisset. Quæritur:

1. Ad quid obliget lex jejunii ecclesiastici?
2. Quid a legibus jejunii et abstinentiæ excuset?
3. Quid ad casum?

Solution

1. To what does the precept of the ecclesiastical fast bind?

Essentially, fasting consists in taking but one full meal in the twenty-four hours and that after mid-day, but it also

implies abstinence from flesh meat unless leave be given to eat it.[1]

2. What excuses one from the precepts of fasting and abstinence?

Physical or moral impossibility of observing the law arising from ill health, laborious occupations, or other source, excuses from the observance of these precepts; a dispensation may be granted by the bishop or by the parish priest.

3. The case. Caius, an officer of militia, in robust health, went hunting on a fasting-day and did not fast. We suppose that Caius ordinarily fasts, and that his ordinary business duties are not sufficiently laborious to excuse him. If he frequently went hunting on fasting-days, and excused himself from fasting, he would do wrong. If he found that the labor of the chase was incompatible with fasting, he should abstain from such laborious recreation and observe the laws of the Church. However, if this happened only once in a while, and Caius had some good reason for joining the hunt on that particular day other than the mere wish to escape fasting, so that it would have been seriously inconvenient not to attend the hunt, and he finds that hunting is incompatible with fasting, he was not blameworthy in what he did.

On a Friday he accepted an invitation to dinner given by the regiment to which his corps was attached, and he did not abstain. There is more difficulty in excusing Caius from blame in this case. If he could easily have declined the invitation, or if, having accepted it, he could easily have made a dinner on fish or other lawful food which is generally provided at such dinners, he did wrong in eating flesh meat on a Friday. Still, again, if it was a very special occasion, and he

[1] Manual of Moral Theology, vol. i, p. 573.

could not absent himself without serious inconvenience, and finding himself seated at dinner he could not procure fish or other lawful food, he might be excused from sin if, without giving scandal, he took flesh meat. In such cases he might ask his parish priest to give him a dispensation, and thus avoid all difficulties.

Last Lent he got a dispensation from fasting, and on days when flesh meat was allowed by indult to fasters at the principal meal Caius took meat two or three times in the day. Whether Caius was justified or not in doing this depends on the terms of the dispensation or the expressed intention of him who granted it. The dispensation might be granted to eat meat only once in the day. This does not seem to have been done; we must suppose that it was granted without limitation. In that case Caius acted within his rights. Those who fast may take meat by indult only once in the day, but Caius was dispensed from fasting.

2

DIFFICULTIES ABOUT FASTING

Titius in Anglia sacerdos missionarius ut possit juxta I Westmonasteriense Concilium jejunii leges initio Quadragesimæ diligenter exponere populo sibi commisso percurrit recentem quemdam auctorem ex cujus lectione difficultates quasdam ortas proponit solvendas. Equidem quærit:

1. Num quoties comedatur vel bibatur lac permittatur?
2. Quales cibi et quantum in collatione permittantur?
3. Plures jejunare possent transponendo frustulum et collationem. Num ad hoc obligentur si aliter jejunare nequeant?
4. Quoties in die dispensatis a jejunio quando ex indulto carnes permittantur eas comedere liceat?
5. Num et unde potestatem in jejunio dispensandi habeat Titius?

Solution

1. Is milk allowed on fast days whenever the faster eats or drinks?

No; *lacticinia, i.e.*, milk, butter, and cheese are by the common law forbidden at least during Lent whenever flesh meat is forbidden.[1] In some places *lacticinia* are also forbidden on other fasting days outside Lent. In England milk and butter are allowed by custom at the full meal outside Lent, and at least by indult in Lent at the full meal. By concession of the Holy See[2] milk, butter, and cheese are allowed by way

[1] Prop. 32, condemned by Alexander VII.
[2] S. O., March 18, 1880.

of condiment at collation, also on all fasting-days except Ash Wednesday and Good Friday.

2. How much food and of what sort is allowed at collation?

About eight ounces of lighter food, excluding always flesh meat and eggs, are allowed at collation. In some places eggs also are allowed. According to an instruction issued by the archbishop and bishops of England in 1883, when fish is taken at collation, the quantity of it should not exceed two or three ounces.

3. Many could fast by taking the collation in the morning and two ounces of food in the evening. Are those who can not otherwise fast bound to adopt this method?

No; it is indeed allowed to fast in that way for some good reason, but as it is not the usual way of fasting in England, there is no obligation to adopt it.

4. How often may those who are dispensed from fasting eat meat on days when meat is allowed at the principal meal to fasters by indult?

That depends on the extent of the dispensation, but unless there is an express limitation, it is generally understood that they may eat meat as often as they please.

5. Have missionary priests in England the power of dispensing from fasting, and whence do they obtain it?

They seem to obtain the power of dispensing those who are committed to their charge from custom, the source whence parish priests obtain it. The existence of the power seems to be implied in I Westmonasteriensi d. XXIII, n. 3.

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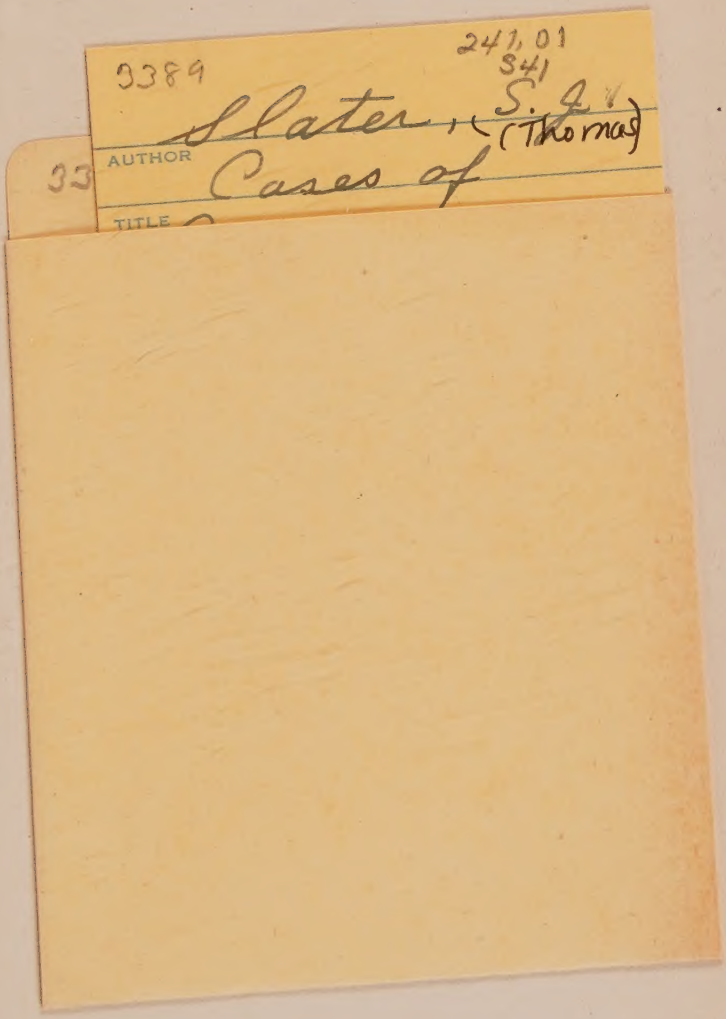
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